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Title: United States, Petitioner
v.
Ike Kozminski, et al.

Docketed:
June 15, 1987

Court: United States Court of Appeals
for the Sixth Circuit

Counsel for petitioner: Solicitor General

Counsel for respondent: Ziemba,Carl, Solicitor General

Entry	Date	Note	Proceedings and Orders
1	Jun 15 1987	G	Petition for writ of certiorari filed.
2	Jun 15 1987		Appendix of petitioner United States filed.
3	Jul 22 1987		DISTRIBUTED. September 28, 1987
4	Aug 31 1987	F	Response requested -- WJB, HAB.
5	Sep 19 1987		Brief of respondents Ike Kozminski, et al. in opposition filed.
6	Sep 23 1987		REDISTRIBUTED. October 9, 1987
8	Oct 13 1987		Petition GRANTED.
			**********
10	Nov 25 1987		Order extending time to file brief of petitioner on the merits until December 14, 1987.
11	Dec 14 1987		Brief of petitioner United States filed.
12	Dec 17 1987		Joint appendix filed.
13	Dec 29 1987		Record filed.
		*	Certified copy of C. A. proceedings received.
14	Dec 30 1987		Brief of respondents Ike Kozminski, et al. filed.
15	Jan 4 1988		Record filed.
		*	Certified copy of original record, box, received.
16	Jan 5 1988		CIRCULATED.
17	Jan 5 1988		SET FOR ARGUMENT. Tuesday, February 23, 1988. (3rd case). (1 hour).
18	Jan 13 1988	G	Motion of International Society for Krishna Consciousness of California, Inc. for leave to file a brief as amicus curiae filed.
19	Jan 29 1988	X	Reply brief of petitioner United States filed.
20	Feb 22 1988		Motion of International Society for Krishna Consciousness of California, Inc. for leave to file a brief as amicus curiae GRANTED.
21	Feb 23 1988		ARGUED.

PETITION FOR WRIT OF CERTIORARI

86 2000 (1)

No.

Supreme Court, U.S.
FILED
JUN 15 1987
JOSEPH F. SPANIOL, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1986

UNITED STATES OF AMERICA, PETITIONER

v.

IKE KOZMINSKI, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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20 pp

QUESTION PRESENTED

Whether "involuntary servitude," as prohibited and made criminal by the Thirteenth Amendment and 18 U.S.C. 241 and 1584, is present only where a person compels another to remain in his service through physical or legal coercion or, if the victim is a minor, an immigrant, or a mental incompetent, through fraud and deceit.

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UNITED STATES OF AMERICA, PETITIONER

v.

IKE KOZMINSKI, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the court of appeals, sitting en banc, (App. 1a-71a) is not yet reported. The panel opinion of the court of appeals (App. 72a-106a) is not yet reported.

JURISDICTION

The judgment of the court of appeals (App. 107a) was entered on April 16, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The pertinent constitutional and statutory provisions are set forth at App. 115a.

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Michigan, respondents, Ike and Margarethe Kozminski and their son John Kozminski, were convicted of conspiring to deprive two mentally retarded white adult males of their Thirteenth Amendment right to be free from involuntary servitude, in violation of 18 U.S.C. 241. Ike and Margarethe Kozminski were also convicted of holding the two adults to involuntary servitude, in violation of 18 U.S.C. 1584. John Kozminski was acquitted on that count. Ike and Margarethe Kozminski were each sentenced to five and ten years' imprisonment on the two counts, their sentences were suspended, and they were placed on probation for two years. Ike Kozminski was also fined $20,000 and ordered to pay $6,190.80 as restitution to each of the two victims pursuant to 18 U.S.C. 3579(a)(1). John Kozminski was sentenced to ten years' imprisonment, his sentence suspended, and he was placed on probation for two years. He was also fined $10,000.

1. At trial, the government established that in 1967 Margarethe Kozminski picked up Robert Fulmer while he was walking down the road and took him to work on the Kozminski family farm (App. 73a). At the time, Fulmer was working at another farm, and Mrs. Kozminski simply left a note telling Fulmer's former employer that he had gone (*ibid.*). Mrs. Kozminski later told several people that she had kidnapped Fulmer (*ibid*). Fulmer has an IQ of 67 (*ibid.*). He has lived in foster homes since he was five, and he spent some of his childhood at a training school (IV Tr. 134-135).

Louis Molitoris came to the Kozminski farm in the early 1970's (App. 73a). Molitoris had been living on the streets in Ann Arbor, Michigan, and had sometimes used the Kozminski barber shop there as a place to sleep (*ibid.*). Some time after they met, Ike took Molitoris to work on

his farm (*ibid.*). Molitoris has an IQ of 60 (*ibid.*). Molitoris had once been institutionalized at a state mental hospital (V Tr. 66).

The evidence indicated that the men were housed in an insect-infected dilapidated trailer with no heat and a refrigerator that did not work (App. 74a; II Tr. 51; III Tr. 24; IV Tr. 45, 143-144, 147-153, 155; V Tr. 15-16, 104). They were often worked from 3:00 in the morning until at least 8:30 at night, without vacation and without pay (except for small gifts on holidays and for the county fair) (*ibid.*). They were dressed in tattered clothes that were inadequate for warmth (App. 74a; III Tr. 20). They were sometimes provided moldy bread to eat and were not provided with proper nutrition (II Tr. 62; III Tr. 30, 32; IX Tr. 208).[1]

Both men were also denied proper medical care (App. 74a). On one occasion, Fulmer cut off the tip of his thumb, and the Kozminskis would not let him have it treated at a hospital (*ibid.*). Neighbors later saw Fulmer's thumb covered with dirt and encrusted with blood (III Tr. 115, 171). Molitoris was once gored by a bull and at another time kicked by a calf, but on both occasions the Kozminskis refused his request to see a doctor (V Tr. 71-73).

The Kozminskis subjected Fulmer and Molitoris to physical abuse for not doing their work as they were directed (App. 74a). Specific instances of such abuse presented at trial include Ike's conduct in slapping Molitoris across the side of the face (II Tr. 139), striking

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[1] There was, of course, evidence presented tending to controvert the adverse conditions and conduct demonstrated by the government. There was testimony, for example, that Ike Kozminski delivered groceries, including luncheon meat, hot dogs, bread, ice cream, and potatoes, every week (IV Tr. 154); that Fulmer and Molitoris were taken out to dinner at a restaurant approximately once a week (IV Tr. 201; V Tr. 91); that they were taken to professional baseball games on several occasions (IV Tr. 203-204; V Tr. 96); and that Ike paid for Fulmer's teeth (V Tr. 26).

Fulmer's ear with the back of his hand (II Tr. 211-212), kicking Fulmer (III Tr. 22; IV Tr. 141), slapping Molitoris across the back (III Tr. 125), and hitting Molitoris with his fist cutting him over his eye (IV Tr. 158-159); Margarethe dragging Molitoris off a tractor, throwing him in a ditch, and kicking him three or four times (III Tr. 22), and slapping Fulmer (V Tr. 39); and John grabbing Molitoris and ripping off part of his shirt (III Tr. 23), and slamming him against the wall (III Tr. 137). The Kozminskis' herdsmen were specifically instructed to hit Fulmer and Molitoris if necessary to get them to work (II Tr. 37), and Molitoris was beaten nearly every day by one of the herdsmen (IV Tr. 157-158). The Kozminskis also frequently directed abusive language and obscenities to the men; they called them names such as "stupid bastard" and "[n]igger motherfucker" (App. 74a; II Tr. 138, 211; III Tr. 21; IV Tr. 82-83).

The Kozminskis told the men they were not to leave the farm (II Tr. 100; IV Tr. 170; V Tr. 74). The Kozminskis also threatened to return the men to institutions if they did not do what they were told (App. 19a; IV Tr. 167). On a number of occasions, the men attempted to run away and the Kozminskis or one of their employees went after them and brought them back (App. 74a).

The Kozminskis told the men not to talk to others and told others not to talk to them (App. 74a). Once when Fulmer used the phone to call a neighbor, Margarethe Kozminski ripped the phone from the wall and told him never to use it again (App. 5a; IV Tr. 168). They told Molitoris that a neighbor might shoot him (III Tr. 73). To further avoid interference, the Kozminskis falsely told neighbors, farm hands, and visitors that the men were in their custody (App. 5a; III Tr. 71, 96, 153; IV Tr. 84).

The Kozminskis also discouraged relatives from contacting the men, and discouraged the men from contacting their relatives (App. 74a). Once when Fulmer's sister called

to arrange a visit, Margarethe told her that Fulmer would be upset by such a visit and that she should not come (IV Tr. 101). Margarethe made the same representation to Fulmer's brother (X Tr. 206). Fulmer once told Ike Kozminski that he would like to visit his brother and sister, and Ike replied that they did not care about him (App. 5a; IV Tr. 173). Shortly after Molitoris came to the farm, the Kozminskis had him burn the trunk containing all his possessions—including his family pictures—because, they claimed, the trunk had cockroaches (App. 5a).

Over the years, Fulmer and Molitoris asked others to help them leave the farm (App. 74a). Molitoris once begged a visitor to call the police to take him away (II Tr. 199-200). A neighbor testified that Fulmer told him he had to get away from the Kozminskis because " 'they are killing me' " (III Tr. 171). And a temporary resident on the farm testified that Molitoris came to his trailer weeping and asked him to take him away from the farm when he left (IV Tr. 85).

In August of 1983, a newly hired herdsman helped the men to leave the farm. While the Kozminskis were out of town, the herdsman notified county officials of the conditions under which the men lived (II Tr. 58-59). When the sheriff and a social service employee came to the farm, Fulmer and Molitoris asked to be taken away before the Kozminskis returned (IV Tr. 44-52). The men were then taken to an adult foster care home (*ibid.*).

2. At the close of the evidence, the district court instructed the jury concerning the meaning of "involuntary servitude." The same instructions applied to both the Section 1584 count and the Section 241 count (for conspiring to deprive Fulmer and Molitoris of their Thirteenth Amendment rights). See App. 109a-112a; XI Tr. 131-137, 154. The court instructed the jury that it was "to determine if there was a means of compulsion used, sufficient in kind and degree, to subject a person having the same general

station in life as the alleged victims to believe they had no reasonable means of escape and no choice except to remain in the service of the employer" (App. 110a). The court stated that involuntary servitude "may include situations in which * * * coercive acts or words cause persons in employment to believe they cannot freely leave employment if the acts are done or the words spoken with the intent to cause this result" (App. 109a). The court cautioned the jury that "an employer can use any legitimate means to retain the services of an emp[l]oyee, such as offering the employee benefits, or seeking to convince the employee that he would be better off if he continued in his employment" (App. 110a).

3. The court of appeals initially affirmed the convictions (App. 72a-106a). The court rejected respondents' claim that Section 1584 would be unconstitutionally vague if not limited to cases of physical or legal coercion (App. 77a-78a). Adopting the reasoning of the Ninth Circuit in *United States* v. *Mussry*, 726 F.2d 1448, 1454-1455, cert. denied, 469 U.S. 855 (1984), the court concluded that Section 1584's "mens rea requirement vitiated vagueness concerns" that might otherwise be presented by a broader construction of the statute (App. 78a).

4. On rehearing en banc, a majority of the court of appeals reversed (App. 1a-71a). The court held that the district court had improperly instructed the jury on the standard for proving involuntary servitude and remanded for a new trial. According to the majority, a holding to involuntary servitude occurs only when (*id.* at 12a):

> (a) the servant believes that he or she has no viable alternative but to perform service for the master (b) because of (1) the master's use or threatened use of physical force, or (2) the master's use or threatened use of state-imposed legal coercion (*i.e.*, peonage), or (3) the master's use of fraud or deceit to obtain or maintain services where the servant is a minor, an immigrant or one who is mentally incompetent.

According to the majority, the district court's charge was too broad because it "would appear to criminalize general psychological coercion without fraud, deceit, force or legal coercion and would include all individuals within the covered class of victims subject to psychological coercion, not just the particularly vulnerable classes" (*id.* at 14a). Finding sufficient evidence from which a jury could conclude that the victims were mentally incompetent and that the defendants practiced fraud and deceit in maintaining their services, the court remanded for a new trial on that limited ground (*id.* at 14a-15a).[2]

Five judges dissented (App. 50a-68a), concluding that the majority had constructed "an arbitrary definition [of involuntary servitude] that raises more questions than it answers" (*id.* at 51a). The dissent emphasized that the definition "not only unduly focuses on the means of accomplishing involuntary servitude, but also, at least as to its third prong, would define and *limit* the classes of persons to whom it applies" (*ibid.* (emphasis in original)). According to the dissent, involuntary servitude occurs whenever " 'the subjugation of the will of the servant is so complete as to render him incapable of making a rational choice' " (*id.* at 52a (quoting *United States* v. *Shackney*, 333 F.2d 475, 488 (2d Cir. 1964) (Dimock, J., concurring)) and the master intends that result (App. 52a).[3]

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[2] The majority also held that the district court erred in admitting expert psychological testimony that the defendants had broken Fulmer and Molitoris of their will to leave by involuntarily converting them (App. 15a-17a). The majority concluded that for expert testimony to be admissible, it must conform to a generally accepted explanatory theory and that the testimony on involuntary conversion did not satisfy that requirement (*ibid.*).

[3] The dissent concluded that the district court acted within its discretion in admitting the government's expert testimony on involuntary conversion (App. 53a-68a). According to the dissent, a district

REASONS FOR GRANTING THE PETITION

The decision of the court of appeals misconstrues the terms of 18 U.S.C. 1584 and the Thirteenth Amendment[4] to limit the scope of their respective prohibitions of "involuntary servitude." According to the court of appeals, a person is held to involuntary servitude, within the meaning of those prohibitions, only when the person's service is compelled by physical or legal coercion, unless he is a minor, immigrant, or mental incompetent, in which case service compelled by fraud or deceit is also barred. These arbitrary limitations find no support in the text of either provision and frustrate the clear intent of Congress and of the Framers of the Thirteenth Amendment to prohibit involuntary servitude wherever it is imposed. The decision also aggravates a split in the circuits on a matter which, for historical and practical enforcement reasons, demands national uniformity. Accordingly, this Court's review is clearly warranted.[5]

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court has discretion to admit expert psychological testimony regardless of whether it conforms to a generally accepted explanatory theory (*id.* at 54a-59a). The dissent also pointed out that other courts of appeals have rejected the standard used by the majority (see *id.* at 58a-59a n.5). Finally, the dissent concluded that, in any event, the district court was justified in finding that the expert testimony conformed to a generally accepted theory (*id.* at 60a-66a).

[4] The jury instruction regarding the meaning of "involuntary servitude" that the court of appeals overturned related both to respondents' Section 1584 conviction and their Section 241 conviction for conspiring to deprive Fulmer and Molitoris of their Thirteenth Amendment rights (see page 5, *supra*). As noted by the court of appeals (App. 2a n.3), the parties agreed that the statutory and constitutional definitions of "involuntary servitude" were identical.

[5] Although the court of appeals reversed and remanded for a new trial on two grounds – its ruling that the jury instructions too broadly defined involuntary servitude and its ruling that certain government expert testimony was improperly admitted (see note 2, *supra*) – we have confined our petition to the involuntary servitude issue, which

1. The courts of appeals are in conflict on the precise issue presented in this case. To date, three circuits have directly addressed the issue whether involuntary servitude is limited to certain methods of compulsion or to certain classes of victims. Each has construed Section 1584 differently. The resulting confusion in the lower courts warrants this Court's review.

Unlike the Sixth Circuit in this case, the Ninth Circuit in *United States* v. *Mussry*, 726 F.2d 1448, cert. denied, 469 U.S. 855 (1984),[6] rejected an arbitrary construction of the scope of Section 1584 and of the Thirteenth Amendment. The Ninth Circuit held that "[c]onduct other than the use, or threatened use, of law or physical force may, under some circumstances, have the same effect as the more

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we believe is the more pressing issue for this Court's review. Hence, we do not challenge here the court of appeals' determination that a new trial is warranted. This Court's review is nonetheless appropriate because absent reversal of the court of appeals' construction of involuntary servitude, we will be forced to retry respondents based on an (incorrect) legal theory, under which highly relevant evidence will be inadmissible and acquittal therefore will be more likely. Should the jury acquit respondents on remand, moreover, we would not then be able to seek review of that result. Indeed, absent review now by this Court, we will be precluded in the future from maintaining Section 1584 prosecutions in the Sixth Circuit that, like this case, depend on coercive means outside of the Circuit's reading of the statute. And, in light of the Double Jeopardy Clause, the government would be unlikely ever to have the opportunity to seek appellate review of this issue in the Sixth Circuit.

[6] We opposed certiorari in *Mussry* on the ground that the case was then in an interlocutory posture and petitioners were, following the court of appeals decision, in precisely the same position they would have occupied had the district court denied their motion to dismiss. Accordingly, we did not address the merits of the petition. See Memo. in Opp. at 3-4 & n.4, *Singman* v. *United States*, No. 84-91. Of course, while this case is also in an interlocutory posture, review now is appropriate because the government would not be equally free to seek further review after remand (see note 5, *supra*).

traditional forms of coercion—or may even be more coercive" (726 F.2d at 1453). According to the Ninth Circuit, the "crucial factor" is not the precise character of the means of coercion, but "whether a person intends to and does coerce an individual into his service by subjugating the will of the other person" (*ibid.*). The court thus concluded, consistent with the jury instructions struck down by the Sixth Circuit in this case, that "[a] holding in involuntary servitude occurs when an individual coerces another into his service by improper or wrongful conduct that is intended to cause, and does cause, the other person to believe that he or she has no alternative but to perform the labor" (*ibid.*). The court specifically rejected (*id.* at 1454-1455) the claim, accepted by the Sixth Circuit in this case, that Section 1584 would be void for vagueness under the Due Process Clause if construed to extend beyond physical or legal coercion.

The decision of the Sixth Circuit in this case is also inconsistent with the decision of the Second Circuit in *United States* v. *Shackney*, 333 F.2d 475 (1964). Both the Ninth and Sixth Circuits read *Shackney* as holding that involuntary servitude, within the meaning of Section 1584, is confined to circumstances where the defendant has subjugated the will of another through physical or legal coercion. See App. 6a; *Mussry*, 726 F.2d at 1452. Neither the Sixth Circuit nor the Ninth Circuit agrees with that standard.[7]

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[7] In dictum, the Fifth and Eleventh Circuits have both suggested their agreement with the Ninth Circuit standard or at least their disagreement with the standard now adopted by the Sixth Circuit. See *United States* v. *Bibbs*, 564 F.2d 1165, 1167 (5th Cir. 1977) ("the law takes no account of the means of coercion"), cert. denied, 435 U.S. 1007 (1978); *United States* v. *Warren*, 772 F.2d 827, 833-834 (11th Cir. 1985) ("[v]arious forms of coercion may constitute a holding in involuntary servitude").

2. The Thirteenth Amendment proclaims that "involuntary servitude * * * shall [not] exist within the United States." Section 1584 expresses Congress's commitment to that principle by making it unlawful to "knowingly and willfully hold[] to involuntary servitude * * * any other person for any term." In each, the commitment to the elimination of involuntary servitude is unqualified. Except for the obvious exclusion of criminal punishment, there are no words of limitation. Involuntary servitude is condemned, in all circumstances and irrespective of the precise manner by which it is brought about.

The district court in this case accordingly instructed the jury that to find the respondents guilty of violating Section 1584 and Section 241 (for conspiring to violate the Thirteenth Amendment rights of another) it must find that the defendants possessed the requisite specific intent and that "there was a means of compulsion used, sufficient in kind and degree, to subject a person having the same general station in life as the alleged victims to believe they had no reasonable means of escape and no choice except to remain in the service of the employer" (App. 110a). Hence, the court did not instruct the jury that it could consider only "means of compulsion" of a specified character, such as physical or legal coercion. Nor did the court instruct the jury that only certain classes of individuals were susceptible to some kinds of coercive measures. The court instead defined "means of compulsion" in terms of the human condition the law was designed to condemn—involuntary servitude—thereby allowing jury consideration of any coercive means "sufficient in kind and degree" to produce that forbidden result. The court instructed the jury concerning the difference between coercive means and the employer's "use [of] legitimate means to retain the services of an emp[l]oyee, such as offering the employee benefits, or seeking to convince the employee that he would be better

off if he continued in his employment" (*ibid.*), and made clear that the latter falls outside the scope of Section 1584 (App. 110a).

The court of appeals reversed respondents' convictions on the erroneous ground that the jury instructions overstated the scope of Section 1584 (and thereby of the Thirteenth Amendment). The court did not dispute the district court's formulation of the requisite state of mind in the victim, agreeing that "involuntary servitude" requires a showing that "the servant believes that he or she has no viable alternative but to perform service for the master" (App. 12a), and that there was sufficient evidence for the jury to conclude in this case "that the victims believed that they had no viable alternative but to perform the labor in question" (*id.* at 15a). The court nonetheless held that even if one were (as in this case) to establish that a defendant intentionally and successfully sought to create that subjugated state of mind in the victim, Section 1584 would still be violated only if it could be further established that the state of mind was caused exclusively by physical or legal coercion, or, if the victim is a minor, immigrant, or mental incompetent, by fraud and deceit.

These restrictions have no basis in the relevant statutory and constitutional language. Both the Thirteenth Amendment and Section 1584 condemn the intentional creation of a result: involuntary servitude. Neither prescribes the means by which that result is achieved or distinguishes between different types of individuals, based on their membership in certain formal legal categories, such as minors, immigrants, and mental incompetents. Nor is there any reason to suppose that involuntary servitude results only from certain coercive means or occurs only to certain classes of persons in the context of Section 1584 and the Thirteenth Amendment. Just as involuntariness may be established in a variety of different ways in other more familiar legal contexts, ranging from contract

and tort law to criminal procedure, so too may it be shown in establishing involuntary servitude.

The court of appeals' decision itself provides little, if any, support for its restrictive gloss on Section 1584. The court readily acknowledges that one of Section 1584's parent statutes "was designed to reach a broader class of exploitation than was previously covered by laws dealing with slavery, involuntary servitude and peonage" (App. 10a), and that Section 1584 was itself a deliberate expansion upon all prior laws (App. 9a & n.5). The court never explains the basis for its conclusion that Section 1584 is, except for certain "legally incapable" persons, limited to "physical or legal coercion." Nor does the court's support for the exception justify its narrow scope.

We do not doubt that Congress has the authority to impose limitations on the scope of Section 1584 that are comparable or even identical to those fashioned by the court of appeals in this case. Congress, however, has not enacted these limitations and, while the scope of Section 1584 may be less precise as a result, a judicial preference for greater precision neither substitutes for congressional intent nor excuses judicial legislation.

3. The issue presented in this case is important to the United States. The court of appeals' decision will impede our ability to maintain successful prosecutions under Sections 1584 and 241 (for conspiring to violate the Thirteenth Amendment) in many meritorious circumstances. For instance, where, as in this case, the defendant used some limited physical force in combination with other means of coercion—such as isolating the victim, withholding wages, denying needed medical assistance, and verbally abusing the victim—the Sixth Circuit standard would preclude any reliance on those other means of coercion.[8] Even introduction of evidence of a defendant's

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[8] Such coercive techniques were utilized by respondents in this case for the specific purpose of compelling service by Fulmer and Molitoris

fraudulent and deceitful activities would be allowed only in a narrow class of cases, which may not include the present case.[9] Most of our Section 1584 prosecutions depend, as does this case, on a combination of coercive measures (see note 8, *supra*).

Perhaps even more important, an individual's entitlement to protection from involuntary servitude currently depends on the jurisdiction in which he happens to reside. Circumstances that would constitute involuntary servitude in the Ninth Circuit would not similarly be considered involuntary servitude in the Sixth Circuit and might not be so considered in the Second Circuit. The Thirteenth Amendment, particularly in light of its historical context, expresses a national commitment. For this additional reason, this Court's resolution of the current conflict in the courts of appeals is warranted.

(see pages 3-5, *supra*) and these and comparable techniques have been utilized in other cases. See, *e.g.*, *United States* v. *Warren*, 772 F.2d at 830, 832 (placing victim in unfamiliar setting; verbal abuse; inducing alcohol dependency), *United States* v. *Booker*, 655 F.2d 562, 564 (4th Cir. 1981) (verbal abuse; withholding wages); *United States* v. *Harris*, 701 F.2d 1095, 1098 (4th Cir.) (denying medical assistance), cert. denied, 463 U.S. 1214 (1983).

[9] The court of appeals remanded for a new trial only after concluding that "there [was] evidence from which a jury could conclude (1) that the victims believed that they had no viable alternative but to perform the labor in question, and (2) that the victims were mentally incompetent and the defendants practiced fraud and deceit in maintaining the victims' service" (App. 15a). Thus, the court of appeals apparently held that the presence of some physical abuse did not justify the admission of evidence of nonphysical coercion unless the victims fell within its third category. Nor is there any guarantee that on remand the jury (or judge) will conclude that the victims in this case were "mentally incompetent" and, hence, evidence of respondents' fraud and deceit may ultimately be deemed inadmissible; indeed, we note that the district court ruled that the victims were "competent" to testify.

CONCLUSION

The petition for a writ of certiorari should be granted.
Respectfully submitted.

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APPENDIX

86 2000

No.

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OCTOBER TERM, 1986

UNITED STATES OF AMERICA, PETITIONER

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 84-1288

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE

v.

IKE KOZMINSKI, MARGARETHE KOZMINSKI,
AND JOHN KOZMINSKI, DEFENDANT-APPELLANTS

On Appeal From the United States District Court
For the Eastern District of Michigan

DECIDED AND FILED APRIL 16, 1987

Before: LIVELY, Chief Judge; ENGEL, KEITH, MERRITT, KENNEDY, MARTIN, JONES, CONTIE*, KRUPANSKY, WELLFORD, MILBURN, GUY, and NELSON, Circuit Judges.

MERRITT, J., delivered the opinion of the court, in which ENGEL, CONTIE, MILBURN and NELSON, JJ., joined. KENNEDY, J. (pp. 18-19), WELLFORD, J. (p. 20), and KRUPANSKY, J. (pp. 21-49) delivered separate concurring opinions. KEITH, J. (p. 50) delivered a separate dissenting

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* Honorable Leroy J. Contie became Senior Circuit Judge July 1, 1986.

opinion. GUY, J. (pp. 51-68) also delivered a separate dissenting opinion, joined by LIVELY, CJ., MARTIN and JONES, JJ.

MERRITT, Circuit Judge. A jury convicted the defendants, a dairy farmer and his wife, of two federal crimes: (1) "willfully holding to involuntary servitude" two retarded farm workers,[1] and (2) conspiring to deprive the workers of their constitutional right to be free from "involuntary servitude" as guaranteed by the Thirteenth Amendment.[2] Their son was also convicted on the conspiracy charge. On appeal the defendants contend that the court below erred in broadly defining "involuntary servitude" to include purely psychological coercion in addition to slavery, peonage, serfdom and other forms of physical or legal coercion.[3] They also

[1]Section 1584, Title 18, punishes as a felony: "Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held . . . ."

[2]Section 241, Title 18, states the conspiracy offense as follows: "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States . . . ."

The Thirteenth Amendment reads: "Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation."

[3]The trial court instructed the jury to incorporate the definition of involuntary servitude from § 1584 into § 241 which encompasses the Thirteenth Amendment. The parties do not challenge the process of incorporating the statutory definition into the constitutional definition, although the Kozminskis argue that the § 1584 definition which was incorporated was incorrect. For the reasons stated below, we agree that the § 1584 standard was incorrect, and it should not have been applied in either context. We do not reach the question of whether it was proper for the trial court to use the same standard for § 241 and § 1584 since this issue was not raised by the parties.

argue that the court below erred in admitting expert psychological testimony tending to show that the two victims were held in servitude through "involuntary conversion" or "brainwashing." After reconsidering the legislative development and purpose of the two nineteenth century criminal statutes in question, we agree with the defendants that the court below erred in defining involuntary servitude too broadly, and we agree that the psychological testimony should not have been admitted.

I.

The government does not contend that the two men were forcibly held to work on the farm. In its *en banc* brief, the governnment concedes that the men were "free to leave," "came back on their own accord" but "believed they had no place else to go." Brief for Appellee at 15. Nevertheless the government contends that the defendants' efforts to isolate the men from contact with the outside world through a pattern of verbal and physical abuse, as well as harsh living and working conditions, exerted a form of extreme psychological coercion upon the men given their low intelligence. According to the government's theory of the case, this coercive conduct, referred to as "involuntary conversion" or "brainwashing," is sufficient to constitute "involuntary servitude."

The servants, Robert Fulmer and Louis Molitoris, lived and worked on the Kozminski dairy farm for more than ten years as general farm laborers. They brought in the cows for milking twice a day, cleaned up the barn during milking, repaired and cleaned farm equipment, hauled feed for the cows and did other farm chores. Dr. Harley Stock, a clinical psychologist, found that Fulmer's I.Q. is 67 and Molitoris' is 60.

Robert Fulmer lived in foster homes until he was eleven years old. He then entered a training school for boys where he learned to do general farm work. In the 1950's and 60's, he worked as a farm hand on various farms. One evening

in 1967, Ike and Margarethe Kozminski and their son, Michael, picked up Fulmer on a road near the farm where he was working. Fulmer agreed to work for them in exchange for food and a place to live. Fulmer worked on the Kozminski's dairy farm in Stockbridge, Michigan until 1968 when he moved to the Kozminski's farm in Chelsea, Michigan.

The other farm worker, Louis Molitoris, had been institutionalized at the Ypsilanti State Hospital and had been a groundskeeper at a cemetery in Ann Arbor, Michigan prior to coming to the Kozminski's farm. In the early 1970's Molitoris was unemployed and lived on the streets of Ann Arbor. During the winter, Ike Kozminski, who also ran a barber shop, occasionally allowed Molitoris to come into his shop to get warm and to sleep. Ike Kozminski thereafter offered to give Molitoris a place to stay, food and cigarettes if he would work on the Kozminski dairy farm. Molitoris agreed.

The government offered testimony about the condition of Fulmer and Molitoris' life on the farm including their living quarters, their physical treatment, their isolation on the farm and how the Kozminski's held them out to the community. Several witnesses testified that the men lived in squalor. The trailer they occupied was filthy having no running water, a broken refrigerator and maggot-infested food. Nevertheless, the men apparently had working bathroom facilities nearby. Moreover, Fulmer and Molitoris were responsible for cleaning their own quarters. Mrs. Kozminski cooked meals for Fulmer when he lived at the Stockbridge farm until he told her he wanted to cook for himself. Thereafter, the Kozminskis provided Fulmer and later Molitoris with groceries.

The testimony about the men's physical treatment includes neighbors', tenants' and co-workers' descriptions of the men being slapped, choked and kicked on several occasions. John and Margarethe Kozminski denied striking the men. Ike Kozminski testified that he kicked Fulmer for hitting a cow with a crowbar and he threw a pail at him for not repairing a leak.

Ike also testified that he hit Molitoris "as hard as I could," after Molitoris hit him while they were loading pigs.

The men often drove a tractor on the road. Several witnesses also testified that they had seen the men in town or in other locations away from the farm. On occasion they left the farm to visit family members or friends. They sometimes "sneaked away" from the farm. They "hid" with neighbors. Two witnesses testified that Ike, Margarethe and John Kozminski brought the men back to the farm and discouraged them from leaving. Four witnesses testified that the men asked them to remove them from the farm.

The government contends that the Kozminskis tried to isolate the men from their families and the outside world. The Kozminskis told visitors on the farm to ignore Fulmer and Molitoris and the men were told not to speak to visitors. Margarethe Kozminski pulled a telephone off the wall in the barn when Fulmer used it to call a neighbor. Shortly after Molitoris moved to the farm, Ike and Margarethe apparently ordered him to burn the trunk which contained his belongings, including family pictures, allegedly because they contained cockroaches. Ike Kozminski told Fulmer his brothers and sister did not care about him. Margarethe discouraged Fulmer's sister and brother from visiting him. She also discouraged Molitoris' sister from calling him.

Witnesses testified that the Kozminskis told neighbors and visitors to the farm the men were in their custody and were wards of the state, although Mrs. Kozminski denied these allegations. Both she and Ike Kozminski testified that at one time they had a farm hand who was a ward of the state.

The court below gave a general charge on involuntary servitude. Under its instructions, the jury could convict the defendants of holding the workers to involuntary servitude through psychological as well as physical coercion. It did not set out a specific theory of involuntary servitude or confine the jury's deliberations to a particular definition of the crime. Instead,

it left the definition of "involuntary servitude" up to the jury under a general charge. This Court granted *en banc* review vacating the judgment of a three-judge panel of the Court, Judge Krupansky, dissenting, which had affirmed the convictions and judgments of the court below with respect to each defendant.

II.

The Courts of Appeals are squarely in conflict in their interpretation of the words of § 1584, "whoever knowingly and willfully holds [another] to involuntary servitude." The two polar cases are *United States v. Shackney*, 333 F.2d 475 (2d Cir. 1964)(Friendly, J.), and *United States v. Mussry*, 726 F.2d 1448 (9th Cir.), *cert. denied*, 469 U.S. 855 (1984) (Reinhardt, J.). In *Shackney*, the Second Circuit gave "involuntary servitude" a narrow construction. The court effectively limited the concept to slavery and peonage: the use or threat of physical punishment to enforce work, and the use of state-imposed legal coercion to make a debtor work for his creditor.

The Ninth Circuit, like the trial court below and the panel decision of our Court, adopts a more expansive interpretation that includes the use of purely psychological coercion. The Ninth Circuit opinion, like the jury instruction of the court below, leaves the precise nature of the crime to the jury under a general charge; "The crucial factor is whether a person intends to and does coerce an individual into his service by subjugating the will. . . ." 726 F.2d at 1453. Although the Second and the Ninth Circuits differ on whether psychological coercion can cause "involuntary" servitude within the meaning of the statute, both courts agree that the coercion —physical, legal or psychological—must produce in the victim the same basic state of mind. The coercion must cause the victim to believe that he has "no alternative," *Mussry*, 726 F.2d at 1453, or "no way to avoid" the labor. *Shackney*, 333 F.2d at 486.

The difficulty of the statutory construction question presented and the lack of agreement among the Circuits have prompted us to reread and reconsider the unusual legislative development and history of § 1584. The history of the statute begins in 1807 when Congress passed a statute prohibiting the slave trade, and it ends in 1948 when Congress, while codifying the criminal laws into Title 18, combined the slave trade and involuntary servitude statutes into the present language of § 1584. (The text of these statutes and their historical development is summarized in a chart attached hereto as an Appendix.)

The words, "hold to involuntary servitude" as used in § 1584, emanate directly from an 1874 statute designed to outlaw the so-called "*Padrone*" system of importing, selling and exploiting the labor of Italian children in the United States. The 1874 *Padrone* statute punished "whoever shall knowingly and willfully bring into the United States. . .any person inveigled or. . .kidnapped. . .with intent to hold. . .to any involuntary service," or "cause to be sold, into any condition of involuntary servitude, any other person." The 1874 statute goes on to say that "every person who shall knowingly and willfully hold to involuntary service any [such] person. . .shall be deemed guilty of a felony. . . ." The original statute is narrower than the present § 1584 because the old statute requires that the victim be "imported" or "sold" prior to the servitude, whereas § 1584 eliminates the requirement of importation or sale prior to the holding of involuntary servitude.

The metamorphosis of the *Padrone* statute into its present form took place in two stages. The 1909 general revision of the criminal law altered the language of the old statute slightly but continued the requirement of importation or sale. At the time of this revision, Congress believed that the broad language of the 1874 statute should be retained because the *Padrone* system and other similar forms of exploitation still flourished. This sentiment is vividly illustrated by Senator

Henry Cabot Lodge's remarks during debate on the 1909 revision:

> The fact, Mr. President, that slavery has long ceased to exist in this country does not seem to me to justify the abolition of statutes such as [these]. . . .There are people who may be guilty of the crimes which those statutes are designed to punish. The Senator referred to a case on the Pacific coast where the Chinese were involved some years ago. I was on a committee of the Senate which investigated the question of the importation of Italian boys into this country. . . .I happen to be one of those who made investigation into what was known as the padrone system. *The padrones were men in New York who brought boys out from Italy and let them out for various purposes—shoeblacks, and one thing and another of that sort—and the boys were held in a condition of practical slavery.* We have tried to meet some of these difficulties by our immigration laws, but the fact that slavery has been abolished, the fact that it is a crime, does not seem to me to make it desirable, therefore, to do away with all the statutes which were designed to punish the crime and which make it a crime.
>
> *The declaration of the thirteenth amendment to the Constitution is not of itself sufficient. . . so I think that statutes of similar nature on the statute books of the United States should remain in order to prevent crimes of that character, whether they occur among the Chinese immigrants or whether among the padrones who exist in New York and in some of our other large cities.*

42 Cong. Rec. 1122 (1908) (statement of Sen. Lodge) (emphasis supplied).

Senator Heyburn, the chief proponent of the penal law revision, also argued for the reenactment of the *Padrone* statute

in order to protect classes of individuals who "can not protect themselves":

> [T]his criminal statute is intended only to enable the law to reach those who come here without being a party to their coming here or without being a party to the disposition of their services or the control of their rights, *whether they be children of irresponsible years and conditions or whether they be people who, because of their environment or the conditions of their lives, can not protect themselves.*

42 Cong. Rec. 1115 (1908) (statement of Sen. Heyburn) (emphasis supplied).

After the reenactment and codification in 1909, the final stage in the metamorphosis of § 1584 occurred in 1948. The old slave trade statute and the *Padrone* statute were combined into § 1584, and the elements of the crime were changed. The combined statute continues to punish those who import, or buy or sell a person with intent to hold to involuntary servitude.[8] In addition, it also punishes those who just hold a person to involuntary servitude without kidnapping, importation or selling. The latter was not possible under either the old slave trade statute or the old *Padrone* statute.[9]

None of the cases listed above, which attempt to define or give content to a standard of involuntary servitude under § 1584, rely on the legislative purpose of the 1874 *Padrone* statute or its judicial interpretation. Judge Friendly in the

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[8] *See supra*, note 1.

[9] This expansion was not inadvertent. The revision notes to § 1584 indicate that Congress deliberately eliminated the kidnapping requirement which had been a predicate to criminal liability in the predecessor statutes. 18 U.S.C. § 1584 historical and revision notes (1982). Other than the changes enumerated in the revision notes, the 1948 recodification was not intended to extinguish the history of these statutes. *See* S. Rep. No. 1620, 80th Cong., 2d Sess. 1 (1948)("The original intent of Congress is preserved.").

Shackney opinion acknowledges this historical development but establishes the narrow Second Circuit standard—limited to physical and legal coercion — without drawing content from the old *Padrone* statute. Judge Friendly reasoned that since the 1948 codification of § 1584 "constitutes 'positive law,' . . .our search must be for the meaning of § 1584 rather than of its two parents." 333 F.2d at 482. Since Judge Friendly believed the 1948 enactment "extinguished" this history, he did not draw on the old statute in framing a standard under § 1584. Neither do any of the other cases decided to date.

We believe it is a mistake to read § 1584 in isolation from the older statutes which produced it. Without the earlier statutes, particularly the *Padrone* statute, and the legislative purpose which animated them, § 1584 would not exist today. Section 1584 does not appear to have any legislative purpose or history aside from that associated with the parent statutes. We therefore believe it necessary to define § 1584 in terms of the nature of the evil which the two predecessor statutes sought to prevent.

Specifically, the legislative history surrounding the *Padrone* statute suggests that it was designed to reach a broader class of exploitation than was previously covered by laws dealing with slavery, involuntary servitude and peonage. The earlier laws clearly covered circumstances involving the use or threatened use of law or physical force to constitute a "holding in involuntary servitude." The *Padrone* statute was aimed at a form of exploitation that was more subtle: securing the services of an individual who is incapable of giving legally valid consent.

Judge Blatchford, writing two years prior to his elevation to the Supreme Court, illustrated this purpose of the *Padrone* statute in *United States v. Ancarola*, 1 F. 676 (C.C.S.D.N.Y. 1880). In affirming Ancarola's conviction for violating the *Padrone* statute, Judge Blatchford addressed the propriety of the trial court's jury charge which had instructed that the age

of the victims be taken into account in determining the voluntariness of their employment. Holding that age was indeed a relevant factor in considering the validity of the children's consent, Judge Blatchford emphasized their unfortunate circumstances:

> [T]he children, in serving the defendant as street musicians, for his profit, to the injury of their morals, subject to his control, could not properly be considered as rendering him voluntary service. They were incapable of exercising will or choice affirmatively on the subject. They were cast off by their parents, in violation of the law of Italy, and their being in this country at all with the defendant was, on all the facts, really involuntary on their parts, although the sham form of their consent was gone through with.

Ancarola, 1 F. at 683.

In our view, *Ancarola* thus stands for the important proposition that service can be involuntary where there exists "sham consent" as a result of several forms of legal incapacity.[6] The *Ancarola* standard was therefore not limited only to physical or legal coercion.

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[6]Judge Blatchford set forth the trial court's jury charge as follows:

> After charging that it must be "proved that the accused brought the child here with the intent to hold the child when so brought to involuntary service as a beggar or as a musician," the court proceeded as follows: "*Upon this question the age of the child is important, for, as you know, in regard to some things a child of such tender years is incapable of consent.* The nature of the employment to which the accused intended to put the child, the evidence in regard to the arrangement made in Italy, and the ability of the child to labor or play an instrument, are important circumstances in this connection, also, for if you believe from the evidence that the intention of the accused in bringing the child to this country was to employ the child as a beggar or as a street musician, for his own profit,

As discussed above, Judge Friendly does not focus on the *Padrone* statute and the interpretation thereof. The *Shackney* standard thus fails to address the full range of conduct proscribed by § 1584 such as that held criminal in *Ancarola*. In establishing our standard, we have attempted to give effect to the 1874 statute in a way that is consistent with the principle of narrow construction of criminal statutes. Accordingly, the standard we adopt modifies the *Shackney* standard to include the type of servitude outlawed in the 1874 statute as interpreted in the *Ancarola* case.

We conclude that a "holding to involuntary servitude" occurs when (a) the servant believes that he or she has no viable alternative but to perform service for the master (b) because of (1) the master's use or threatened use of physical force, or (2) the master's use or threatened use of state-imposed legal coercion (*i.e.*, peonage[7]), or (3) the master's use of fraud or deceit to obtain or maintain services where the servant is a minor, an immigrant or one who is mentally incompetent. In cases in the last category, it must be shown that the servant is under a disability to recognize or resist the master's fraud or deceit because of the servant's vulnerability as a member of one of these classes. In order to be found guilty under the statute, the master must intentionally hold

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> and that such intended employment was one injurious to its morals and inconsistent with its proper care and education, according to its condition, then you will be justified in finding that he intended to hold such child to involuntary service, as charged in the indictment, and this, *notwithstanding the fact that the child had consented to the employment in Italy, and that no evidence of a subsequent dissent, while under the control of the accused, has been given.*"

Ancarola, 1 F. at 682 (emphasis supplied).

[7] *See e.g., Pollock v. Williams*, 322 U.S. 4 (1944); *Bailey v. Alabama*, 219 U.S. 219 (1911); IX A. Bickel & B. Schmidt, *History of the Supreme Court of the United States: The Judiciary and Responsible Government 1910-21* 820-907 (1984).

the victim to involuntary servitude in one of these proscribed ways.

This definition protects those whose services have been wrongfully obtained and who believe that they have no viable way of avoiding the services demanded. The physical force and legal coercion prongs of our standard follow *Shackney* and its progeny in the Fourth, Fifth and Eleventh Circuits which outlaw various forms of slavery, serfdom and peonage.[8] The third prong emanates directly from the history of § 1584 and is designed to protect extremely vulnerable classes of individuals covered by the 1874 *Padrone* statute, classes similar to those who lack the capacity to contract at common law.

The Restatement (Second) Contracts § 12(2) discusses capacity to contract in relevant part as follows: "A natural person who manifests assent to a transaction has full legal capacity to incur contractual duties thereby unless he is (a) under guardianship, or (b) an infant, or (c) mentally ill or defective. . . ." We also include immigrants because of the express purpose of the predecessor statute to § 1584, the *Padrone* statute.[9] This interpretation is supported by Senator

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[8] The Fourth Circuit requires the "threat of violence or confinement, backed sufficiently by deeds." *United States v. Harris*, 701 F.2d 1095, 1100 (4th Cir.), *cert. denied*, 463 U.S. 1214 (1983) (quoting *United States v. Booker*, 655 F.2d 562, 567 (4th Cir. 1981)). The Fifth Circuit requires "such fear of physical harm that the victim is afraid to leave, regardless of the victim's opportunities for escape." *United States v. Bibbs*, 564 F.2d 1165, 1168 (5th Cir. 1977), *cert. denied*, 435 U.S. 1007 (1978). According to the Eleventh Circuit, "[t]he use, or threatened use, of physical force to create a climate of fear is the most grotesque example of such coercion." *United States v. Warren*, 772 F.2d 827, 833-34 (11th Cir. 1985), *cert. denied*, 106 S. Ct. 1214 (1986). The *Mussry* case is discussed at footnote 9 of the *Warren* opinion. Since the evidence was apparently sufficient under either standard, the court did not comment on adopting or rejecting *Mussry*.

[9] In Section I of his dissenting opinion, Judge Guy derides the inclusion of immigrants in our standard by saying

Heyburn's statement quoted above that the slave trade laws were intended to protect "children of irresponsible years and conditions. . .[and] people who, because of their environment or the condition of their lives, can not protect themselves." 42 Cong. Rec. 1115 (1908).

The District Court did not limit the masters or the servants covered by the statute to the narrow categories described above. The District Court's rulings and instructions would appear to criminalize general psychological coercion without fraud, deceit, force or legal coercion and would include all individuals within the covered class of victims subject to psychological coercion, not just the particularly vulnerable classes referred to in the legislative history of the statute. The Ninth Circuit's, the panel's and the District Court's broad definition might appear to place the day-to-day activities of cult groups, communes and religious orders within the coverage of the statute. Our standard would criminalize these activities only if the group engaged in one of the proscribed types of conduct.

We reverse and remand the case for new trial for these reasons. After a careful review of the evidence, we conclude that

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Furthermore, the inclusion of "immigrants" as a special class cannot be supported by reference to the *Padrone* statute as the majority opinion itself suggests. As the Appendix to the majority opinion itself indicates, the antecedent statutes reference "any person inveigled or forcibly kidnapped in any other country, with intent to hold such person so inveigled or kidnapped in confinement or to any involuntary service. . . ." This is hardly the definition of an immigrant.

This same appendix sets forth the title of the statute as follows: "Chap. 464. An act to protect persons of foreign birth against forcible constraint or involuntary servitude." We think "persons of foreign birth" means "immigrant" and would not include kidnapping an "American in Paris"—a point amply supported by the legislative history set out above.

we should not order a judgment of acquittal, as the defendants contend, because there is evidence from which a jury could conclude (1) that the victims believed that they had no viable alternative but to perform the labor in question, and (2) that the victims were mentally incompetent and the defendants practiced fraud and deceit in maintaining the victims' services.

III.

The Kozminskis also contest the admissibility of the expert psychological testimony presented at trial by Dr. Harley Stock. Dr. Stock testified that given the victims' low mentality, the psychological pressures exerted upon them created an "involuntary conversion" to complete dependency akin to "captivity syndrome," a psychological phenomenon arising from prolonged physical captivity. This testimony was offered to show that Fulmer and Molitoris were the victims of psychological coercion and had been "brainwashed" into serving the Kozminskis. This evidence is inadmissible because a foundation was not laid to establish its conformity to a generally accepted explanatory theory.

The admissibility of expert testimony is governed by Rule 702 of the Federal Rules of Evidence. Rule 702 states:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

For expert testimony to be admissible under Rule 702, a four-part test must be met: (1) a qualified expert; (2) testifying on a proper subject; (3) *in conformity to a generally accepted explanatory theory*; (4) the probative value of which outweighs any prejudicial effect. *United States v. Green*, 548 F.2d 1261, 1268 (6th Cir. 1977) (emphasis supplied); *United States*

v. Smith, 736 F.2d 1103, 1105 (6th Cir.), *cert. denied*, 469 U.S. 868 (1984). The elements of this four part test under *Green* constitute preliminary questions for purposes of Rule 104(a) of the Federal Rules of Evidence. As such, the trial judge must find that the expert and the proposed testimony meet the *Green* criteria prior to admitting the testimony: this is not a jury question. *See* Fed. R. Evid. 104 advisory committee's note; 11 J. Moore & H. Bendix, *Moore's Federal Practice*, § 702.10[3] (2d ed. 1985).[10]

It does not appear that a proper foundation was laid under the third element of the *Green* test. The criticisms voiced by Drs. Emanuel Tenay and Robert Walsh suggest that Dr. Stock's "involuntary conversion" theory is not scientifically-recognized. Dr. Tenay stated that he had never heard of Dr. Stock's "involuntary conversion" theory prior to trial. Dr. Tenay went on to note that the phenomenon of "ideological conversion" which is associated with captivity syndrome would have "no application" to the present situation, and that it would be "ridiculous" to attempt to apply it. Dr. Walsh testified that he considered involuntary conversion to be equivalent to brainwashing and opined that Dr. Stock's diagnosis "exceeded sound professional practice."

Dr. Stock attempted to establish his theory by incorporating the well-established "captivity syndrome." Although captivity syndrome is a generally accepted explanatory theory, it has no application to this case. Drs. Tenay and Stock both agreed that "captivity syndrome" has ten necessary elements:

> (1) Prolonged captivity; (2) continuous around the clock supervision, such as guarding; (3) an isolated environment; (4) removal of all supports; (5) an attack on personality; (6) a lack of privacy; (7) assault upon the total personality; (8) a systematic use of reward and punishment; (9) a tearing of the fabric of the personality; and (10) the building up of a new personality.

[10]The argument that *United States v. Green* should be overruled is made for the first time in Judge Guy's en banc dissent, and the court has not considered or voted on this issue.

These factors are not present in this case. There is no evidence that Fulmer and Molitoris were subjected to conditions equivalent to those described above. For example, there was no evidence of actual captivity, a necessary element of captivity syndrome. This list of conditions describes the process employed by the Chinese to "brainwash" prisoners of war during the Korean conflict. As bad as conditions on the Kozminski's dairy farm are alleged to be, they fall short of those found in a Chinese prison camp. Accordingly, captivity syndrome is inapplicable as a matter of law given the facts of this case. Therefore, a proper foundation was not laid for Dr. Stock's testimony under the third element of the *Green* standard and it should have been excluded.

Accordingly, the judgment of the District Court is reversed and the case remanded for a new trial under the standards enunciated herein.

KENNEDY, Circuit Judge, concurring. I concur generally in Judge Merritt's opinion. However, because he adopts a totally subjective standard of involuntariness, I think there needs to be some mention of the relationship of the standard to the intent of the defendants. Psychological coercion which can be established only through testimony of expert witnesses presents a significant problem with respect to a defendant's intent and knowledge. Can a master be guilty of holding someone in involuntary servitude where the master, a lay person, doesn't know that the servant remains involuntarily? If expert testimony is necessary for the jury to find the servitude involuntary, it would seem that a defendant also needs that expert knowledge.

Where the master uses force or the threat of force or state-imposed legal coercion to require the servant to remain, the intent to hold the servant in involuntary servitude is apparent. Here evidence that the master treated the servants cruelly and provided deplorable living conditions was relevant to establishing involuntariness only because of the clinical psychologist's testimony that such treatment, alternated with kind treatment, such as providing a nice Sunday dinner, made the servants dependent and unable to leave. Conduct which had such effect, but without evidence that the master knew or should have known of that effect, does not tend to prove intent. In the case of psychological coercion, the jury should be required to find that the defendant knew his conduct would cause the victim to remain involuntarily. The master does not hold the servant to involuntary servitude unless the master knows that the servant serves involuntarily.

I agree that the case should be remanded for a new trial because of defendants' acts which made it less likely that others would help Fulmer and Molitoris to leave the farm; the jury could find these acts were intended to keep them there and that the victims were incapable of acting on their own initiative. Representation by the Kozminskis that Fulmer and Molitoris were wards of the court, acts which isolated

the victims from their families and the community, and telling the victims that they had no place to go or would have to return to an institution, could be found to be fraud or deceit which prevented Fulmer and Molitoris from leaving the farm and prevented others in the community from assisting them to do so, when they were incapable of acting on their own.

WELLFORD, Circuit Judge, concurring: While I am disposed toward the standard set by Judge Friendly in this kind of case in *United States v. Shackney*, 333 F.2d 475 (2d Cir. 1964), and I likewise do not adopt the rationale set out in *United States v. Mussry*, 726 F.2d 1448 (9th Cir.), *cert. denied*, 469 U.S. 855 (1984), I am persuaded by Judge Merritt's reasoned analysis of both principal issues in this case, and I therefore concur in Parts I, II and III and the result ultimately reached.

It seems to me that perhaps the best expression of the rule is set out in *United States v. Bibbs*, 564 F.2d 1165, 1168 (5th Cir. 1977), which requires proof of physical harm or reasonable fear of harm and coercion imposed by a defendant on a victim before a prosecution may be sustained:

> [A] defendant is guilty of holding a person to involuntary servitude if the defendant has placed him in such fear of physical harm that the victim is afraid to leave regardless of the victim's opportunities for escape.

I would therefore reverse and remand in this case.

KRUPANSKY, Circuit Judge, concurring. I concur in Judge Merritt's well-reasoned opinion and the decision of the majority to reverse the judgment of the trial court and its order to remand this case for further action not inconsistent with the judgment of the majority of the en banc court.

I write separately merely to observe that Dr. Stock, speaking through the record, takes exception to the following hypotheses upon which the logic of the dissent seeks to evolve its reasoning:

1. that his expert opinion testimony advancing the novel concept of involuntary conversion and its relationship to involuntary servitude was not anchored in the scientifically accepted theory of captivity syndrome;

2. that his novel concept was not a scientific explanatory theory of first impression but one that had gained general acceptance within the particular scientific field to which it belonged;

3. that the transcript of the record does not contest his novel concept as scientific theories that had gained general acceptance within the particular scientific field to which they belonged.

Dr. Stock insisted throughout his testimony, as demonstrated by the record, that the scientifically recognized and accepted theories of "captivity syndrome" and "post-traumatic stress disorder" were seminal to his concept of "involuntary conversion" as it related to involuntary servitude. The entire thrust of the government's evidence was structured upon the keystone of his efforts to correlate his conclusions with "captivity syndrome" and "post-traumatic stress disorder." His inability to accomplish this calculated result within the mandates of existing legal precedent gives rise to this order of reversal and remand to the trial court.

It should be initially noted that the defendants were convicted of a conspiracy to violate the rights of Fulmer and

Molitoris to be free from involuntary servitude in violation of 18 U.S.C. § 241 and of actually holding Fulmer and Molitoris to involuntary servitude and preventing them from leaving the farm where they worked in violation of 18 U.S.C. § 1584. Both charges mandated proof of intent to commit the offenses.

It was not the government's theory in presenting this case that either Fulmer or Molitoris were restrained from leaving the farm and the defendants' employment by either physical force or threats of physical force. Rather, it was the thrust of the government's proof that both Fulmer and Molitoris, as a result of an "involuntary conversion" became "psychological hostages" and lost their "will" to leave the farm and the service of the defendants.

Dr. Stock's testimony was the only evidence that addressed the very essence of the government's charges, and was, therefore, the sine qua non of the jury's verdict, without which the conviction could not stand.

An appropriate point of departure for my chronology is a definition of and purpose for the rule that identifies the standard to be applied in considering the admissibility of scientific evidence in the form of expert testimony.

The rule is simply stated in *United States v. Brown*, 557 F.2d 541, 556 (6th Cir. 1977), and echoed in its progeny within and without this circuit in the following language:

> A necessary predicate to the admission of scientific evidence is that the principle upon which it is based "must be sufficiently established to have gained general acceptance in a particular field to which it belongs," *Frye v. United States*, 54 App.D.C. 46, 293 F. 1013, 1014 (1923). In *United States v. Franks*, 511 F.2d 25, 33 n.12 (6th Cir. 1975), we equated general acceptance in the scientific community with a showing that the scientific principles and procedures on which the expert testimony is based are reliable and sufficiently accurate.

The purpose for the rule is equally simple. It evolved to avoid the potential prejudicial impact of "the aura of special reliability and trustworthiness" which attaches to expert testimony admitted without proper foundation which may confuse or mislead the trier of fact and thus defeat a defendant's right to a fair trial.

Perhaps the purpose behind the rule is best articulated in *Brown*, 557 F.2d at 556, where this court admonished:

> A courtroom is not a research laboratory. The fate of a defendant in a criminal prosecution should not hang on his ability to successfully rebut scientific evidence which bears an "aura of special reliability and trustworthiness," although in reality the witness is testifying on the basis of an unproved hypothesis in an isolated experiment which has yet to gain acceptance in its field. *See e.g., United States v. Amaral*, 488 F.2d 1148, 1152 (9th Cir. 1973); *Frye v. United States*, 293 F. at 1014.

The permissible limits of expert testimony have been traditionally delegated to the sound discretion of the trial court. The scope of this discretion has been broadly construed, and the trial court's exercise of its discretion is to be sustained "unless it is manifestly erroneous." *Brown*, 557 F.2d at 556; *United States v. Green*, 548 F.2d 1261, 1268 (6th Cir. 1977). *See also United States v. August*, 745 F.2d 400, 407 (6th Cir. 1984). However, such discretion must be exercised, on an ad hoc basis, by balancing the probative value of the evidence against its prejudicial effect upon the defendant's right to a fair trial. *See* Fed.R.Evid. 403.

I fully recognize and endorse the proposition that absolute certainty of result or unanimity of scientific opinion is not required for admissibility so long as the conflicting testimony

concerning the conclusions drawn by the experts are based on generally accepted and reliable scientific principles.

Having reviewed the rule that is decisive to the admissibility of a scientific explanatory theory and the purpose for its existence, it is obvious that expert testimony is not permissible in every case where the witness purports to base his testimony on ostensibly scientific principles. *See, e.g., Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923); *United States v. Franks*, 511 F.2d 25, 33 n.12 (6th Cir.), *cert. denied*, 422 U.S. 1042 (1975); *United States v. Green*, 548 F.2d 1261 (6th Cir. 1977); *United States v. Brown*, 557 F.2d 541 (6th Cir. 1977); *United States v. Brady*, 595 F.2d 359 (6th Cir.), *cert. denied*, 444 U.S. 862 (1979); *United States v. Amaral*, 488 F.2d 1148 (9th Cir. 1973).

Mindful of the rule, its purpose, and the parameters of its application, my observations merely attempt to present an analysis of the scientific conclusions and concepts applied by Dr. Stock to the facts of this case.

Factually, it is conceded that both Fulmer and Molitoris were mentally retarded, however, not to the degree inferred in the dissenting opinion. The record reflects that both individuals had an acute awareness of their past activities, their existing environment, working conditions, and their general responsibilities and duties. They were well-oriented as evidenced by their abilities to attend, understand, and enjoy baseball games; to understand and follow the various serial presentations of "soap operas" and other television programs which they viewed on a daily basis in their trailer on a television set furnished by the defendants; and to visit and converse with neighbors from time to time and return to the defendants' farm. Their personal appearance, hygiene, and living conditions within the house trailer furnished by the defendants were of their own choice. Bunks, running water, soap, and showers were always available to them in the bunkhouse. The defendants imposed no regimen upon the lifestyles adopted by the two men. As a matter of fact, although

the Kozminskis resided in the vicinity of the farm where Fulmer and Molitoris lived and worked, they seldom visited the farm more frequently than once a week. Fulmer often complained that John Kozminski's single visit was too isolated to provide Kozminski with an insight into the problems inherent to operation of the farm.

The lifestyles of both Fulmer and Molitoris prior to coming to the defendants' farm reflected an unfortunate history of aimless dereliction without significant family relationships. Prior to working as a farm hand for the defendants, Molitoris, who was 60 years of age, was a street person who got his food where he found it, "had slept in cardboard boxes in the winter" and in an old ice box, and "drank homemade wine." Fulmer, age 59 years, had lived in a foster home from age 5 to 11 years and was thereafter institutionalized, where he was taught to work as a farm hand. Upon release from the institution, he drifted from farm to farm performing the same simple, menial chores he performed for the defendants.

Of greatest significance in addressing the opinion testimony of Dr. Stock within the context of this case are the concessions of the parties that (a) neither Fulmer nor Molitoris were ever physically confined or restrained; (b) they were at all times physically free to leave the farm at will; (c) *they knew they were free to leave the farm*; (d) *they did in fact individually and together leave the farm on numerous occasions*; (e) they returned of their own accord or were picked up by the defendants as a result of telephone calls from third parties;[1] (f) they associated freely with each other, with other farm hands working the farm, and with neighbors on occasion; (g) they remained at or returned to the defendants' farm, in the words of Fulmer, "because he had no place to go."

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[1]On occasions when Fulmer or Molitoris were picked up as a result of telephone calls from third parties, there is no indication that they were forcefully returned to the farm.

Dr. Stock tailored his purported scientific opinions to the above related facts and concluded that, as a result of the living conditions to which Molitoris and Fulmer were intentionally exposed by the defendants, the two men experienced, in Dr. Stock's coined terminology, an "involuntary conversion," became "psychological hostages," and thus were held to involuntary servitude by the defendants' willful acts as charged in the indictment.

In determining the admissibility of Dr. Stock's expert testimony within the pronouncements of existing precedent as discussed herein, I am directed to the guidelines enunciated in *United States v. Amaral*, 488 F.2d 1148 (9th Cir. 1973), and subsequently adopted by this circuit in *Green*, 548 F.2d at 1268, and applied in *Brown*, 557 F.2d at 566, and *United States v. Smith*, 736 F.2d 1103, 1105 (6th Cir.), *cert. denied*, 105 S.Ct. 213 (1984):

> Four factors must appear in the record to uphold the admission of expert testimony: 1. qualified expert; 2. proper subject; 3. conformity to a generally accepted explanatory theory; and 4. probative value compared to prejudicial effect.

Brown, 557 F.2d at 556.

The third element enumerated in *Amaral* provides that such expert testimony must be in "conformity to a generally accepted explanatory theory." Implicit in the language is the predicate that the theory be firmly anchored in sound, reliable, and sufficiently accurate scientific principles, and sufficiently established to the point of having achieved general acceptance within the particular field to which it belongs. Stated differently, the scientific explanatory theory must have (a) received at least some exposure within the scientific peerage to which it belongs; (b) received peer evaluation to determine its scientific validity and reliability; and (c) achieved general acceptance within the scientific community to which it belongs.

Apart from the comments of his scientific peers, Dr. Stock's own admissions render his conclusions inadmissible under existing legal standards. At the outset, Dr. Stock's progression from "involuntary conversion" through "psychological hostage" to the ultimate result of "involuntary servitude" must be distinguished from his testimonial discussion of "captivity syndrome" and "post-traumatic stress disorder." The distinction is critical to an analysis of his testimony since "captivity syndrome" and "post-traumatic stress disorder" are mutually exclusive and have independent origins, as will be more fully hereinafter discussed.

The "captivity syndrome," as a characterized condition, had its genesis as a predictable scientific phenomenon in 1924 when Ivan Pavlov, a Russian physicist, first perceived the relationship between prolonged physical and equivalent mental stress and control of behavior patterns. The subject again received considerable notoriety as a result of a proliferation of prisoner of war and concentration camps that existed during World War II.

The practice, characterized in early scientific literature as the Triple-D Syndrome (debility, dependency, and dread), was refined into a highly sophisticated and effective ordeal by the Chinese during the Korean conflict. In published research, Dr. Robert Lifton, a noted psychiatrist, synthesized the concepts of "captivity syndrome" from his exhaustive studies and clinical evaluations of returning Americans held captive by the Chinese during the Korean war.

Obvious from the foregoing brief summary, the Triple-D Syndrome, currently characterized as "captivity syndrome," had received wide exposure within the scientific community to which it belongs, had been evaluated by the peerage of that scientific community, and had received acceptance within that group, thereby, satisfying the third criterion of *Amaral*. Equally well recognized within the peer group of psychiatrists and psychologists was the diagnosis of "post-traumatic stress disorder." This diagnosis had, perhaps,

received even greater exposure and acceptance than "captivity syndrome."

It is interesting to note at this juncture that an examination of Dr. Stock's testimony discloses that whenever he resorted to supporting an opinion or conclusion by published research or peer endorsement, he referred, with experienced subtlety, not to his theory of progression from "involuntary conversion" through "psychological hostage" to "involuntary servitude," but rather to the conditions of "captivity syndrome" and "post-traumatic stress disorder," both of which philosophies had received recognition and acceptance within the scientific community to which they belong.

Dr. Stock's damaging, if not fatal, admissions condemned his opinion testimony as a hypothecation that had not "attained general acceptance in the scientific community." *Brown* at 556. He readily conceded that he was not aware of *any* literature, let alone published research, that addressed his theory; that the Diagnostic and Statistical Manual of Mental Disorders (Third Edition), the recognized official authority of the American Psychiatric Association, carried no listing for "involuntary conversion" or "psychological hostage"; that his theory had never received peer recognition; and that he could not correlate his concepts to Dr. Lifton's "captivity syndrome." The coup de grace was, however, delivered by his own statements that his instant testimony represented *the first case* wherein he advanced his hypothecations of "involuntary conversion" and its relationship to "involuntary servitude."[8] It is no wonder that his peers were initially

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[8] Q. What is your clinical experience with involuntary servitude as opposed to involuntary conversion?

A. This is actual—this is my first case of involuntary servitude.

Q. So this is the first case that you have dealt with the so-called stress, or whatever—however you want to phrase it—was not immediate and obvious?

unaware of his theory, and after having been apprised of his logic, characterized it as exceeding "sound professional practice, confused the situation" and "ridiculous" and an "invention of Stock." Accordingly, the record disclosures make it evident that if, as Dr. Stock testified, his instant testimony was the first public presentation of his theory, it necessarily followed that it never received peer evaluation or validation, let alone recognition as an explanatory theory that had attained general acceptance within the scientific community to which it belonged within the mandates of existing precedent. *See Green, Brown, Brady, Franks.*

It is perhaps appropriate at this point to interpose my approval of the pronouncements in *United States v. Stifel*, 433 F.2d 431, 438 (6th Cir. 1970), *cert. denied*, 401 U.S. 994 (1971), that "neither newness nor lack of absolute certainty in a test suffices to render it inadmissible in court. Every new development must have its first day in court." The expression in *Stifel*, however, must be tempered with the longstanding teachings of *Green, Brown, Brady*, and *Franks*. Certainly, the application of *Stifel* would not apply to a theory of first impression as testified to by Dr. Stock.

A. No. I think the threat in this case was immediate and obvious.

Q. That is the conclusion you reached, isn't it?

A. That is right.

Q. But your testimony is you have never dealt with this type of situation before; isn't that correct?

A. That's correct.

Q. You have never testified with regard to this situation before?

A. Well, if I have never dealt with it, I never could have testified before.

Q. You have never been called upon to make a diagnosis or an evaluation in this area before; is that right?

A. Right.

In *Brown*, this court recognized the hazards of exposing the trier of facts to ostensibly scientific techniques which defied effective response under circumstances where the scientific theory had no demonstrable standard against which it could be evaluated, tested, or duplicated:

> There are good reasons why not every ostensibly scientific technique should be recognized as the basis for expert testimony. Because of its apparent objectivity, an opinion that claims a scientific basis is apt to carry undue weight with the trier of fact. In addition, it is difficult to rebut such an opinion except by other experts or by cross-examination based on a thorough acquaintance with the underlying principles. In order to prevent deception or mistake and to allow the possibility of effective response, there must be a demonstrable, objective procedure for reaching the opinion and qualified persons who can either duplicate the result or criticize the means by which it was reached, drawing their own conclusions from the underlying facts.

Brown, 557 F.2d at 556, *quoting United States v. Baller*, 519 F.2d 463, 466 (4th Cir.), *cert. denied*, 423 U.S. 1019 (1975).

The scope and magnitude of the confusion and prejudice generated by Dr. Stock's testimony cannot be fully appreciated without an analysis of his reasoning. Dr. Stock postulated "*in this particular case, the basis for the post-traumatic stress disorder as defined in the literature is the captivity syndrome. The captivity syndrome is the underlying event that causes the post-traumatic stress disorder, what occurs to people in captivity.*" (emphasis added). Dr. Stock thereupon developed his logic in the following manner on direct examination:

> Q. Well, isn't it true that you contemplate . . . telling the jurors, if allowed to do so, that the so-called traumatic event occured?
>
> • • •

> A. No. What I am contemplating telling the jurors, if the allegations are true, that it is my opinion, based on information that I had available to me and my knowledge as an expert witness, that these individuals did indeed suffer the captivity syndrome. They suffered from captivity syndrome.

On cross-examination he proceeded:

> Q. Despite the fact there is not literature on that subject at all through the second day of February of 1984 that you are aware of or have read?
>
> A. No. There is a lot of literature about the *captivity syndrome*.
>
> Q. In relation to individuals who supposedly are kept under the conditions which existed here?
>
> A. Yes. In the sense it may not have been called involuntary servitude, but the conditions are analogous to other such happenings.
>
> Q. What were the analogous conditions?
>
> A. Well, Mr. Stringer went through the 11 points [Dr. Lifton's defined eleven essential elements underlying "captivity syndrome"]. If you would like, I'd be glad to go through it again.
>
> Q. But those were all basically, were they not, where somebody was kidnaped or concentration camps or a prisoner of war camp?
>
> A. That is right.

(emphasis added).

On further direct examination he elaborated:

> Q. But you have examined these men and have an opinion as to whether or not they suffer a post-traumatic stress syndrome that would be consis-

tent with a captivity syndrome prior to the time you examined them; is that correct?

A. Yes. Based on my understanding of the scientific literature and my clinical experience in the area.

Q. In fact, they did suffer from the *captivity syndrome* and now, *post-traumatic stress syndrome*, that would have affected their psychological ability to leave or end the—to leave the environment that was causing this syndrome; is that correct?

A. Yes. It seems to me the bottom-line question is if people have an opportunity to escape when they are being held in any situation, why don't they? Captivity syndrome explains that.

THE COURT: Would you tell me how would you define the captivity syndrome?

THE WITNESS: The captivity syndrome, Your Honor, are psychological, are environmental manipulations that occur to make people's normal thinking, feeling and reactions.

(emphasis added).

Simply stated, Dr. Stock posited that Molitoris and Fulmer developed "captivity syndrome" as a result of the living conditions and treatment intentionally imposed upon them by the defendants which induced "post-traumatic stress disorder" that destroyed their will to voluntarily leave the farm and employ of the defendants, even though they were free to do so, thereby transforming them into "psychological hostages" bound to "involuntary servitude" for the defendants.[3] Dr. Stock further hypothecated that the

[3]Direct examination of Dr. Stock:

Q. Do you have any explanation for their not leaving the farm where they were, the Kozminski farm?

"captivity syndrome," as discussed by Dr. Lifton in his published research of American prisoners held captive by the Chinese during the Korean war, and the "brainwashing" which induced "ideological conversion,"[4] were analogous to the techniques employed by the defendants in their continuing efforts to intentionally control Molitoris and Fulmer.

Even the most casual review, however, will disclose that the eleven criteria identified by Dr. Lifton as essential to the "brainwashing" implemented by the Chinese to achieve the thought control necessary to accomplish the "ideological conversion" characterized as "captivity syndrome" are patently incomparable with the living conditions and treatment to which Molitoris and Fulmer were exposed.

Initially, it should be noted that the "brainwashing" techniques employed by the Chinese as studied by Dr. Lifton were scientifically conceived, scientifically implemented, and scientifically monitored around the clock. The techniques were professionally structured into a planned, systematic, progressive program calculated to totally pervert and/or destroy an individual and to change his behavior and his beliefs. Essen-

A. Yes, on the surface, it appears that they had numerous opportunities to leave, and the question to me, interesting question, is why didn't they.

It's my opinion that they were psychological hostages, that even though they had the physical ability to get away from the farm, they were so tied to the farm that these [defendants] were their only caretakers, they became psychologically substituted parents for them. They could not form the requisite intent to escape . . . .

[4]Although the record disclosed that the term "ideological conversion" refers to the efforts of the Chinese to influence the ideological beliefs of American captives with a view toward having them denounce the United States for propaganda purposes, the record does not reflect that the term bears any relationship to the term "involuntary conversion" as coined by Dr. Stock.

tial to effective metamorphosis of the prisoner was an *environment of physical captivity, a realization of the futility of escape or rescue, and the use of force or the ever-present threat of force and even death.*

Only with an insight into the sophisticated techniques utilized by the Chinese in systematically phasing a captive through the stages described by Dr. Lifton's writings as essential to inducing "captivity syndrome" does the attempted correlation of Dr. Lifton's criteria to the living conditions and treatment to which Molitoris and Fulmer were exposed become incomprehensible.[5] The "brainwashing" discussed by Dr. Lifton involved total sensory deprivation. The prolonged confinement of the prisoner entailed total isolation in a room of limited space without access to any reference point and without hope of escape or rescue; time and all concept of time were eliminated; the prisoner was permitted to see no one but his guard; the prisoner slept only as permitted; he was permitted to hear only what he was intended to hear; he was spoken to only by his captors; he was physically humiliated; he had no toilet facilities; he was permitted no privacy when performing normal bodily functions; he was under around the clock surveillance by his guard; and *the prisoner was constantly placed in fear of his life.* The insidious procedure constituted a total assault on the individual personality calculated *to force* him to recant all of his personal and ideological values and accept the values and beliefs of his captors.

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[5]The essential elements for inducing the "captivity syndrome" as enumerated by Dr. Robert Lifton were:

> (1) prolonged captivity; (2) continuous around the clock supervision, such as by guarding; (3) an isolated environment; (4) removal of all supports; (5) an attack on personality; (6) a lack of privacy; (7) assault upon the total personality; (8) a systematic use of reward and punishment; (9) a tearing of the fabric of the personality; (10) the building up of a new personality; and (11) ritualistic behavior, which was not considered by Dr. Stock in his analysis.

In light of this comparative analysis, any attempt to equate the "brainwashing" practiced by the Chinese to induce Dr. Lifton's "captivity syndrome" with Dr. Stock's "involuntary conversion" and "psychological hostage" was, in the language of Dr. Emanuel Tenay,[6] "ridiculous" and an "invention of Stock." Dr. Robert Walsh,[7] characterized Dr. Stock's analogy

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[6]Dr. Emanual Tenay is a graduate from the University of Munich, Germany, School of Medicine. He interned at Michael Reese Hospital in Chicago, Illinois; completed his psychiatric residency at Elgin State Hospital. He attended post-graduate school at the University of Michigan. He is licensed as a medical doctor by the State Medical Board of Michigan. He has a specialty in psychiatry and a sub-specialty in forensic psychiatry. He is a diplomat of the American Board of Psychiatry and Neurology and is certified as a specialist by the American Board of Psychiatry and Neurology and also acted on its Board of Examiners. He is a diplomat of the American Board of Forensic Psychiatry. He is a director of the Detroit Receiving Hospital, Department of Psychiatry. He enjoys staff privileges at all of the major hospitals in the Detroit area, including Beaumont, Harper, Grace, St. John, Sinai, and College Hospital of Grosse Pointe. He is a member of the American Psychiatry Association, a Fellow of the American College of Forensic Sciences, a member and past president of the Michigan Psychiatrists Society and a number of other professional organizations in the immediate geographic area. He has published in excess of seventy professional papers and has lectured to various law enforcement agencies as well as professional groups. He has conducted seminars involving forensic psychiatry throughout the country. He has appeared as a professional witness on behalf of the United States government in a number of criminal matters, i.e., the Jack Ruby investigation, the Garwood Vietnamese captive case, and the Theodore Bundy case. He has written professional papers—treatises on concentration camp survivors and captives of prisoner of war camps. He delivered a paper at an international symposium on the psychiatric aspects of captivity as well as captives of terrorists and hostage situations arising as a result thereof. Dr. Tenay is a friend of Dr. Lifton. He is presently a clinical professor of psychiatry at Wayne State Medical School.

[7]Dr. Robert R. Walsh is a board-certified clinical psychologist licensed by the State of Michigan and an employee of the State Prison of Southern Michigan since 1974, where he exercises ultimate responsibility for virtually the total mental health care of approximately 5,000 prisoners residing in the central region of the Michigan Department

as exceeding "sound professional practice and confused the issue."

On voir dire, Dr. Stock under cross-examination conceded:

> Q. Now, sir, is there literature dealing with the subject matter of involuntary servitude as being equatable to involuntary conversion, that you are aware of:
>
> A. Not that I am aware of.
>
> Q. You know of none, right?
>
> A. That's correct.

Both Doctors Tenay and Walsh confirmed that the terms "involuntary conversion" or "psychological hostage" could not be found in any psychiatric or psychological textbook or in any psychiatric or psychological literature.

Even Dr. Stock, in a colloquy with the court, stated:

> THE COURT: . . . but is captivity syndrome and involuntary conversion the same thing?
>
> THE WITNESS: . . . well, I guess it's not exactly the same thing. If we look at a circle, the captivity syndrome is another circle.

The interrelationship of a "post-traumatic stress disorder" diagnosis with Dr. Stock's formulations is more difficult to comprehend. It would appear that under Dr. Stock's reasoning, "in this particular case . . . the post-traumatic stress disorder . . . is the captivity syndrome." Dr. Stock had previously equated the cause of "captivity syndrome" with the living

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of Corrections. He has a bachelor's and master's degree from Michigan State University and a doctoral degree from the University of Wisconsin at Madison, Wisconsin in Educational Psychology. He is familiar with Dr. Lifton's book as well as the entire spectrum of literature on the subject and is a scholar in the field.

conditions experienced by Molitoris and Fulmer at the defendants' farm.

There is no controversy between the parties as to a definition of post-traumatic stress disorder. It is well-identified by Dr. Walsh:

> It generally requires the individual to have been exposed to a very severe stressor, and the book is very clear in giving examples of this. Survivors of the Nazi death camps is one example. The victim of a very, very brutal rape or sexual assault could definitely be P.T.S., post-traumatic syndrome. A victim of a national disaster such as a severe earthquake, tornado or a severe auto accident where they were incapacitated and possibly remained in the wreckage for a long time and in a state of semiconsciousness, this sort of thing is required initially.
>
> Exposure to the stressor which has a delayed response on a person. In the case of the Vietnam veterans, he may have returned back to the United States and to th: perception of those around them, assimilated relatively normally and then all of a sudden something happens. Quite often they re-experience the trauma or the stressor.
>
> In the case of the Vietnam veteran it may be the backfiring of an automobile, it may be just a police helicopter or a regular helicopter just in earshot, throwing him back, psychologically back into that condition in the jungles of Vietnam.
>
> • • •
>
> These generally are considered to be a diminished capacity to respond in his or her environment. The reoccurrence of the stimulus event or something remotely resembling it, like the whirring of a helicopter or the backfiring of a car, produces a very, very clear dramatic effect on the individual.

• • •

Again, this is the diagnostic criteria from the manual. The first thing that is required is the existence of a recognizable stressor that would evoke significant symptoms of distress in almost everyone.

And again this is the type of stressor I've mentioned before, very severe, very life-threatening. Generally the individual is in a situation where at least at some point during it they don't know if they are going to survive. They are really faced with the imminent possibility of death and no control from their perceptual standpoint over it.

Re-experiencing of the trauma as evidenced by at least one of the following: One, recurrent and intrusive recollections of the event. These are very vivid memories or re-experiencing of it, really. As I mentioned before, the veteran walking down the street, for example, that he hears the whirring of a helicopter in the air. Automatically, psychologically and mentally, at that point he is back in Nam. He may start acting very erratically. He may become very dangerous.

• • •

[T]here is a numbing of responsiveness to or reduced involvement with the external world beginning sometime after the trauma is shown by at least one of the following: One, markedly diminished interest in one or more significant activities. Generally you have to know what the person's interests were before. They often withdraw. They may have had a hobby. They may have been good in some particular vocation. They are no longer interested in this, they don't do it. It's a very obvious sign to people around them, spouse, siblings, this sort of thing.

Two, feelings of detachment or estrangement from others. They don't feel part of society anymore, they feel different. They've had this experience. They don't feel close to other people. They feel alienated in a very real sense. You couldn't understand what they experience. You weren't through it, this sort of thing, so there is a tendency to pull away.

Three, constricted effect, which typically means that their emotional responsivity no longer runs the full range that we may experience from euphoria to extreme depression. It's in a much more limited range. It may very well be primarily depressive, and often is, in content. It may be planned. They are not spontaneous, I guess, is the best word. Spontaneous or full in the range of emotional responsivity that we would be.

I find no dispute among the parties that the essential stressor to a diagnosis of post-traumatic stress disorder is an immediate, obvious, severe, life-threatening incident over which the stressee/victim has no perceptual control. Typical examples cited in the literature are victims of the Nazi death camps; victims of an exceptionally brutal rape or sexual assault or other violent criminal act; victims of a severe natural disaster such as a violent earthquake, tornado, flood or fire, or other catastrophe; airplane or automobile disasters; bombing; and torture. None of such occurrences are disclosed by the facts depicting the living conditions to which Molitoris and Fulmer were exposed.

With this as background, I am constrained to re-examine Dr. Stock's opinion[8] in an effort to give some fabric to his testimony.

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[8]The essence of Dr. Stock's diagnosis of "post-traumatic stress disorder" was, I presume, to provide substance for his conclusion that both Molitoris and Fulmer, as a result of their living conditions, were

His examination reflects the following dialogue:

Q. But you have examined these men and have an opinion as to whether or not they suffered a post-traumatic stress syndrome that would be consistent with a captivity syndrome prior to the time you examined them; is that correct?

A. Yes. Based on my understanding of the scientific literature and my clinical experience in the area.

Q. In fact, they did suffer from that captivity syndrome and, now, post-traumatic stress syndrome, that would have affected their psychological ability to leave or end the—to leave the environment that was causing this syndrome; is that correct?

A. Yes. It seems to me the bottom-line question is if people have an opportunity to escape when they are being held in any situation, why don't they? Captivity syndrome explains that.

He proceeded to develop his logic by stating in response to the court:

THE COURT: What do you describe as the condition that you would define as the captivity syndrome?

THE WITNESS: The condition is the breaking down of free will, of conscious and volitional choice.

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so traumatized that they lost their will to voluntarily leave the farm. His expressed conclusion appears to be contradictory in light of his concession to the court that his reports reflected no diagnosis of "post-traumatic stress disorder." Both Drs. Tenay and Walsh also ruled out the diagnosis.

THE COURT: And its relevance in this case is what, as you understand it?

THE WITNESS: Explaining why if these people had opportunities to walk way [sic], why they did not.

Upon further examination by the court, Dr. Stock responded:

Q. There is no place in your report . . . that post-traumatic disorder, either chronic or delayed, exists in this case, is that correct?

A. That's correct.

Upon further examination he conceded that the collapse of the captives' will, as described by Dr. Lifton, was not a criterion for a diagnosis of post-traumatic stress disorder:

Q. Where under post-traumatic stress disorder does it say the breaking down of will is part of the criteria, that is what you told the Court?

A. I would include that under the death camps, concentration camps, prisoner of war.

• • •

Q. *I'm asking you is that listed in the criteria?*

A. *The breaking down, specifically, no, it's not.*

(emphasis added).

Dr. Stock, in a purely conclusory manner, thereafter summarized his rationale, after going full circle, by restating his scientifically unsupported thesis that, although the "captivity syndrome" was anchored in forcible physical confinement and was not equatable to the living conditions experienced by Molitoris and Fulmer, and the facts of those living conditions would not support the diagnosis of "post-traumatic stress disorder," it was nevertheless his opinion that both Molitoris and Fulmer were "psychological hostages" who had

no will to leave the defendants' farm and were therefore bound to "involuntary servitude":

> Q. Doctor, the basis of your opinion, . . . you have assumed all of the facts as true, is that correct, that have been related to you?
>
> A. Yes. It's my feelings if they were, if they were true, then, this is what occurred.
>
> Q. And you have literally in your eleven points [Dr. Lifton's defined eleven elements essential to rendering "captivity syndrome"], if you just take number one, concluded, which is a conclusion, that captivity exists?
>
> A. Yes, in the *psychological sense*.

(emphasis added).

It is true, as the dissent appears to opine, that "captivity syndrome" is well documented in psychological literature; however, recognition of "captivity syndrome" as a generally accepted theory within the particular field to which it belongs is not at issue in this appeal. At issue is the correlation/equation or lack thereof between "captivity syndrome" and "psychologically induced involuntary servitude." It is this lack of correlation/equation between the two inconsistent theories that has been the thrust of defendants' argument before the trial court and here on appeal. It is the absence of *any* peer recognition, validation, or acceptance of a correlation between the two theories in literature, research, or otherwise that supports the defendants' assignments of error.

It is also true that the defendants challenged Dr. Stock's terminology of "involuntary conversion"; however, the challenge transcends the isolated phrase. The defendants challenged the application of the term as a catalyst for Dr. Stock's unsupported assertions of "psychologically induced involuntary servitude" or a "psychological hostage" situation. It is the transition from a forceful *physical* confinement and systematic coercive environment calculated to induce "ideological conversion," which is the essential predicate for "captivity syndrome," to *psychologically* induced involuntary servitude in a environment free of forceful physical confinement or psychological coercion that gives rise to the defendants' exceptions.

The dissent would bridge the vital gap, although Dr. Stock was unable to do so, by characterizing Dr. Stock's use of the term involuntary conversion as merely a description to convey the recognized effects of the captivity syndrome. However characterized, Dr. Stock's expressions to the jury, intended as ostensibly expert opinion predicated upon sufficiently established professional principles and as having gained general acceptance in the particular field to which it belonged, stand naked and ignored by his peers and find support only in this initial airing of his own personally tailored theory.[9]

The dissent again misconstrues the issues on appeal when it urges that, since the defendants elected to present two experts who contradicted Dr. Stock's analogy of the "captivity syndrome," it was for the jury to evaluate the weight of the evidence. *The weight of the evidence is not in question*; the threshold issue is the *admissibility* of the evidence that must be initially addressed. *Brown*, 557 F.2d at 556, addressed the issue thusly:

> Conflicting testimony concerning the conclusions drawn by experts, *so long as they are based on a generally accepted and reliable scientific principle*, ordinarily go to the weight of the testimony rather than to its admissibility.

(emphasis added). The language presumes a competent expert witness and testimony which is based upon demon-

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[9]This was the first time that he testified to his theories: "this is my first case of involuntary servitude."

strated reliable principles which have been sufficiently established to have gained general acceptance in the particular field to which they belong.

In sum, this case represents a classical example of the manner in which expert testimony, admitted without proper foundation, can confuse or mislead the trier of fact and thereby defeat a defendant's right to a fair trial. Without doubt, Dr. Stock's opinion conveyed apparent objectivity as is evident from the jury's verdict. His obstensibly scientific theory carried undue weight with the trier of fact and precluded effective response beyond an ineffective general denial. Since Dr. Stock's theory had received no exposure among his peers, qualified persons had no opportunity to either validate Dr. Stock's results or criticize the means by which he reached his opinions. Thus, paraphrasing the admonition of *Brown*, 557 F.2d at 556, *the courtroom in the present case was a research laboratory. The fate of the defendants in this criminal prosecution rested on their ability to successfully rebut scientific evidence which had an "aura of special reliability and trustworthiness,"* although in reality, Dr. Stock was testifying to an unproved hypothesis in an isolated experiment which had not gained general acceptance in its field.[10]

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[10]It would appear that the dissent would overrule overwhelming legal precedent in this circuit and throughout the nation that recognizes the necessity for a strong countervailing restraint on the admission of expert testimony to protect a defendant's right to a fair trial.

After recognizing that:

> There are good reasons why not every ostensibly scientific technique should be recognized as the basis for expert testimony. Because of its apparent objectivity, an opinion that claims a scientific basis is *apt to carry undue weight with the trier of fact.* In addition, *it is difficult to rebut such an opinion except by other experts or by cross-examination* based on a thorough acquaintance with the underlying principles. In order to prevent deception or mistake and to allow the *possibility of effective response, there must be a demonstrable, objective procedure for reaching the opinion and qualified persons who can either duplicate the result or criticize the means by which it was reached,* drawing their own conclusions from the underlying facts.

Brown, 557 F.2d at 556 (emphasis added). The dissent disregards the admonition with the observation that the "defense produced two experts who differed with and effectively criticized Dr. Stock's testimony."

It is true that after the trial court erroneously admitted Dr. Stock's highly prejudicial testimony, the defendants presented two experts to contradict Dr. Stock's opinions; however, they had no alternative after the court permitted him to testify.

I would therefore reaffirm the sound pronouncements by this circuit in *Green, Brown,* and *Brady* and reverse the trial court on this issue.

The competency of Dr. Stock to testify as an expert witness was placed in issue by the government and the court as demonstrated by the following dialogue:

> Ms. Morgan [government counsel]: Your Honor, we would offer Dr. Stock as an expert in the field of Forensic Psychiatry and offer his expert testimony to the Jury.
>
> THE COURT: I don't pass on qualifications, it's up to the jury. Go ahead and interrogate him.

Initially it should be noted that Dr. Stock was offered "as an expert in the field of Forensic Psychiatry." Dr. Stock was neither a medical doctor nor was he qualified in the specialty of psychiatry, let alone in the field of forensic psychiatry. This alone should have made his competency suspect.

The trial court obviously abdicated its mandatory duty to psss upon the competency of a witness offered as an expert. The dissent would dismiss this refusal to act by citing to defense counsel's failure to object. The reliance is misplaced.

The salient purpose for entering an objection during trial is to alert the trial court to an issue which demands its attention and to record for appellate review the court's disposition thereof. The record here has concisely preserved the issue for appropriate review. After the court disposed of the objection, counsel were thereafter obliged to abide by the ruling and to proceed with the trial of the action. *Manness v. Meyers*, 419 U.S. 449, 459, 95 S.Ct. 584, 591, 42 L.Ed.2d 574 (1975).

This court has construed Fed.R.Evid. 702 to permit the admission of expert testimony only when it is presented by (1) a qualified expert; (2) testifying on a proper subject; (3) in conformity to a general accepted explanatory theory; (4) the probative value of which outweighs any prejudicial effect. *Green*, 548 F.2d at 1268. The appellants have also charged the trial court with error in permitting the government's expert to testify and to express opinions contrary to the first mandate of *Green*. *Green*, 548 F.2d at 1268, paraphrases Fed.R.Evid. 702 as follows:

> To permit expert testimony to be heard by the jury, *the trial court must first determine* whether the specialized knowledge involved "will assist the trier of fact to understand the [other] evidence or to determine a fact in issue." Then *it* must satisfy *itself* that the proffered *witness* is "qualified as an expert by knowledge, skill, experience, or education ..." *Appellate review of such sensitive discriminations by lower courts may only be rationally accomplished on an ad hoc basis.*

(emphasis added).

The non-delegable duty is, as a matter of law, placed squarely upon the shoulders of the trial judge. Stated differently, competency of a witness to testify is for the judge to decide while credibility of the witness is left to the jury. *United States v. Barnard*, 490 F.2d 907, 912 (9th Cir. 1973), *cert. denied*, 416 U.S. 959 (1974). Expert testimony is admissible only when the witness is in fact an expert and is accepted as such by the court. *United States v. Amaral*, 488 F.2d 1148, 1153 (9th Cir. 1973). Meaningful implementation of this mandate by the trial court has historically afforded the accused the protection against the prejudicial impact of opinion evidence clothed with the weight of expertise, which gave rise to the rule, and allayed the apprehensions voiced in *Amaral* and *Green* and echoed by their progeny. Abdication of the duty by the trial judge is plain error.

The dissent recognizes, but seeks to avoid, the error charged by the defendants by stating in essence that, with regard to the first criterion, the defendants did not argue that Dr. Stock was not a qualified expert; they simply argued that the district court failed to find that he was a qualified expert. I cannot agree with that conclusion. The argument presented in defendants' briefs and before this court belies that formulation. Defendants clearly contested both Dr. Stock's competency as an expert and the trial court's refusal to consider and pass upon that competency when the facts of his expertise demanded a court ruling. More specifically, defendants challenged Dr. Stock's competency to extrapolate a "psychologically induced involuntary servitude" or a "psychological hostage" situation in an environment free of forceful physical confinement and/or systematic psychological coercion from a forceful physical confinement and environment coupled with insidious coercive psychological treatment calculated to induce "ideological conversion," which is the preconceived predicate for "captivity syndrome" as discussed by Dr. Lifton. In sum, defendants objected to Dr. Stock's competency to formulate and testify to a thesis of first psychiatric/psychological impression which has its basis in an unproved hypothesis derived for an isolated purpose and which has no acceptance in the scientific field to which it belongs.

An examination of Dr. Stock's credentials[11] reflected aca-

[11]The record disclosed that Dr. Stock's academic credentials included a Bachelor of Arts degree in psychology from the University

demic training in the diagnosis and treatment of disturbed children and neurologically impaired children. He had extensive experience in testing and evaluating children and adolescents who were mentally retarded. He was familiar with the literature in the field of psychiatry characterized as "victimization," which he defines as dealing with victims of rape and other violent crimes, terrorism including hostage-taking, and natural disasters. His knowledge of "captivity syndrome" resulted from reading Dr. Lifton's book.

The defendants have not questioned Dr. Stock's competency to administer individual intelligence tests or personality assessment tests, to conduct group testing, and to interpret and evaluate individual mental retardation levels, the extent

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of Florida in Emotionally Disturbed Children; a Master of Science degree in Clinical Psychology from Emporia State University and a Doctorate in Psychology from the University of Kansas in Neurologically Impaired Children. Dr. Stock was a fully licensed psychologist in the State of Michigan. He was not board certified in any area or specialty. He participated in an internship at the Department of Psychiatry at Rutgers Medical School. He was an Adjunct Professor of Psychology at Trenton State College and in 1977 undertook employment at the Center for Forensic Psychiatry in Ypsilanti, Michigan. He listed no hospital privileges. He has lectured at the Special Operations Research Section of the FBI Academy at Quantico, Virginia on International Terrorism and Hostage Negotiations and at the United States Secret Service Academy in Washington, D.C. on Interview Interrogation and Threat Analysis to the President. He was an instructor at the Jackson Community College Police Academy and the Criminal Justice Training Center in Ohio in the field of Hostage Taking and Hostage Negotiations. He has presented papers at the American Psychological Association in Washington, D.C. on the Technology of Terrorism and Psychological Consulation to Police Agencies. He wrote a paper for the Journal of Psychiatry on the subject of the Law on Competency to Stand Trial. Dr. Stock characterized his practice in the following terms:

> In my capacity as a psychologist I work with numerous individuals, children, and adolescents who are mentally retarded and in my work at the Forensic Center I have evaluated and treated individuals who were mentally retarded.

of the examination that he conducted of Fulmer and Molitoris that was described as extensive in the dissent. Defendants have taken no exception to his opinions concerning the mental retardation levels of Molitoris or Fulmer. All of the foregoing practices and procedures were well within the area of his expertise and training. His experience and training in the area of testing, interpreting, and evaluating levels of retardation did not, however, qualify him as an expert in the unrelated field discussed in Dr. Lifton's book. Moreover, absent any correlation in the record between "terrorism" including "hostage-taking" and Dr. Lifton's "captivity syndrome," Dr. Stock's experience in the area of "terrorism" lends no weight to his qualifications to advance a theory beyond his expertise which had not received recognition, validation, or general acceptance in the field to which it belonged.[12]

In light of Dr. Stock's questionable credentials and his highly convoluted and often confusing and contradictory testimony, the trial court, at the very least, had a duty to protect the defendants' right to a fair trial by exercising its mandatory duty to rule on Dr. Stock's competency to appear as an expert witness. Abdication of this duty by the trial court constituted plain error. I would therefore also reverse the trial court on this issue.

Accordingly, it would appear that the record herein does not support the hypotheses upon which the dissent relies.

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[12]The record does not demonstrate any interplay or interrelationship between "hostage-taking" and Dr. Stock's "involuntary conversion" "psychological hostage" thesis. The conditions associated with "hostage-taking" were characterized as the "Stockholm Syndrome" by Dr. Stock. The record also fails to disclose any analogy between the eleven points of Dr. Lifton's "captivity syndrome" and the criteria that induces "Stockholm Syndrome."

KEITH, Circuit Judge, dissenting. I concur in Judge Guy's well-reasoned dissenting opinion. However, I write separately to highlight some of my concerns about this case. I feel that the majority opinion unduly restricts the scope of 18 U.S.C. § 1584. Judge Guy correctly states that fraud and deceit are not the only ways to subjugate the will of another. Also, limiting the class of victims to minors, immigrants and mental incompetents is underinclusive and without merit.

I am especially disturbed with the majority's treatment of the expert testimony issue. I think that the majority's reliance of the factors in *United States v. Green*, 548 F.2d 1261 (6th Cir. 1977), is misplaced. The *Green* analysis should be limited to determining the admissibility of *scientific* evidence. In this case, the testimony of Dr. Stock was based on his clinical findings, not on an esoteric theory.

Based on the above, I think the Court is committing an egregious error in the position that it has taken.

GUY, Circuit Judge, dissenting, joined by LIVELY, Chief Judge, MARTIN and JONES, Circuit Judges. I respectfully dissent from the majority's conclusions in both part II and part III of the opinion.

I.

It is clear that 18 U.S.C. § 1584 is lacking in definitional precision when it makes criminal the holding of one in "involuntary servitude." Whether this is the genius of this section or a deficiency to be cured by judicial legislation is not so clear. The majority apparently concludes it is a deficiency and proceeds to cure it by substituting an arbitrary definition that raises more questions than it answers. In discussing this specific section, Judge Dimock, who concurred in *Shackney*, prophetically wrote:

> To have an arbitrary classification which will resolve with equal facility all of the cases that would arise under the statute is indeed a tempting prospect. It is much harder to have to work under a statute which will raise difficult questions in the borderline cases inevitable whenever the application of a statute depends upon an appraisal of the state of the human mind.

333 F.2d at 488.

The problem with the definition offered by the majority is that it not only unduly focuses on the means of accomplishing involuntary servitude, but also, at least as to its third prong, would define and *limit* the classes of persons to whom it applies. I see no necessity for the former and no justification for the latter.

Whenever one attempts to define by setting out the *means* of accomplishment the risk of underinclusion is considerable. What is needed is a definition of "involuntary servitude" not a listing of examples of how it may be accomplished. I would offer as an acceptable definition, at least for "involuntary,"

that suggested in the concurring opinion in *Shackney*: "Where the subjugation of the will of the servant is so complete as to render him incapable of making a rational choice, the servitude is involuntary . . . ." *Id.* at 488. It goes without saying that since this is a criminal statute, the master would, of course, have had to intend this result.[1]

The "fraud and deceit" prong of the majority's test apparently is the creation of the majority as is the limiting of the classes to whom it is to apply. Prongs (1) and (2) of the proposed test—physical force and legal coercion—are the slavery and peonage tests. "Fraud and deceit," however, are not terms of art in the arena of involuntary servitude cases and would seem to cover an almost limitless range of conduct. Since I write in support of a more flexible definition than that offered by the majority, it is not the breadth of the proposed definition that is troubling. I simply see no need to specifically reference "fraud and deceit" to the exclusion of other means. I would agree that fraud and deceit, in addition to physical force and legal coercion, are ways of subjugating the will of another—but they are certainly not the only ways, nor are they necessarily the most egregious.

I am also puzzled as to why the "fraud and deceit" exception, if there is to be one, should be limited in its application to minors, immigrants, and mental incompetents. Where it is necessary to resort to The Restatement (Second) on Contracts to interpret a criminal involuntary servitude statute, I become concerned that revision, not interpretation, is underway. Furthermore, the inclusion of "immigrants" as a special class cannot be supported by reference to the *Padrone* statute as the majority suggests. As the appendix to the majority opinion itself indicates, the antecedent statutes reference

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[1] I think that the legislative history utilized by the majority is more helpful on the question of what "servitude" means. I would concur that the servitude contemplated is of a type associated with slavery and peonage.

"any person inveigled or forcibly kidnapped in any other country, with intent to hold such person so inveigled or kidnapped in confinement or to any involuntary service . . . ." This is hardly the definition of an immigrant.

I would offer as the final evidence in support of the proposition that the majority's new definition causes more problems than it cures the fact that, when it is applied to the instant case, the result is a remand for a retrial on the fraud and deceit theory even after the majority rules out Dr. Stock's testimony. Although I would affirm the original conviction, I nonetheless find it strange and unsettling to send a criminal case of this nature back for a retrial on a theory never advocated by the government or defended against by the defendants in the first trial.

This is not an easy definitional question and it is one on which reasonable minds and federal circuits might differ. I write in dissent, however, primarily because I believe the majority has rewritten rather than interpreted 18 U.S.C. § 1584.

II.

I have even greater concern for the *ramifications* of part III of the majority's decision than I do part II. This concern is predicated, at least in part, by the frequency with which courts deal with these problems. Involuntary servitude cases are few and far between, whereas cases in which experts testify are a daily occurrence.

Due to what the record tells us about the condition of the victims of this alleged crime and how traumatic the trial was for them, I doubt very much that there will ever be a retrial pursuant to our remand. Even if there is, I do not consider it a matter of global significance whether Dr. Stock is allowed to testify or not.[2] However, I am concerned about the ratio-

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[2] It is not clear from the majority opinion whether the *foundational* problems that they find mandate exclusion of Dr. Stock's testimony are correctible in a second trial.

nale used for the exclusion of this evidence being used in other cases. As I will develop further, *infra*, I submit that our decision in *United States v. Green*, 548 F.2d 1261 (6th Cir. 1977), on which the majority *wholly* relies, should be clarified if not overruled by this *en banc* court—not extended.

A.

The majority cites *United States v. Green*, 548 F.2d 1261 (6th Cir. 1977), as setting forth the standards to be applied in determining the admissibility of expert testimony. Green, convicted of conspiracy to manufacture a controlled substance, Dimethyltryptomine, challenged expert testimony admitted at trial. First, he challenged the testimony of a chemist from the Food and Drug Administration who testified, among other things, as to the threat posed by the drug, its effects upon the body, the procedure by which it may have been classified as a controlled substance, and its relationship to LSD. Second, Green challenged the testimony of a DEA agent who testified as to the number of dosage units which were theoretically manufacturable from the chemicals found, the anticipated purity of the final product, the street price of a dosage unit, and the details of other illegal drug transactions that had no relation to the defendant. *Id.* at 1264-65.

Significantly, the *Green* court first noted that Fed. R. Evid. 702 set forth the test for admissibility of expert testimony. 548 F.2d at 1268. Nevertheless, the court found Rule 702 deficient when applied to criminal cases, in that it failed to include among the factors to be balanced by the trial court the potential prejudicial impact of the expert testimony upon the substantial rights of the accused. *Id.* Consequently, relying on *United States v. Amaral*, 488 F.2d 1148, 1153 (9th Cir. 1973), the court adopted "for use in criminal appeals the four criteria proposed in *Amaral* for review of trial court decisions concerning expert testimony: '1. qualified expert; 2. proper subject; 3. conformity to a generally accepted

explanatory theory; and 4. probative value compared to prejudicial effect.' " *Id.*[3]

To the extent that the *Green* court suggested that its test must be applied to *all* expert testimony in criminal cases, such holding is clearly inconsistent with common practice. To the contrary, many types of expert testimony are regularly received in criminal cases without resort to standards such as those set forth in *Green*. *Green* describes the type of test courts generally employ when analyzing the admissibility of *scientific* evidence. To my mind, there is a difference between the type of scientific testimony to which such a test is normally applied, and the expert testimony of a clinical psychologist like Dr. Stock.

Dr. Stock did not simply take two individuals, whom he had never met or spoken to, and based on a set of known facts attempt to fit them into a theory. Rather, he extensively interviewed Fulmer and Molitoris, performed a battery of psychological tests, reviewed medical histories, and acquainted himself with the circumstances under which they lived. Dr. Stock testified that his opinion was derived from his clinical evaluation of the two men, including the objective tests he administered, as well as his experience in this field and the accepted theory of involuntary conversion. As a result, Dr. Stock's testimony is no different than the *clinical assessments* of psychologists and physicians regularly received by trial courts. I am unable to distinguish this type of testimony from, for example, that of a psychologist or psychiatrist testifying on the issue of a criminal defendant's sanity. Essentially, Dr. Stock testified, after careful examination

[3]It is not readily understandable why the *Green* court found it necessary to adopt any special test for the admissibility of expert testimony in criminal cases. In finding that the trial court erred in admitting the testimony, the court concluded that the testimony was irrelevant and prejudicial, determinations commonly made under Fed. R. Evid. 401 and 403. Even more significant is the fact that *Amaral* was decided *before* the Federal Rules of Evidence were adopted.

of the individuals as well as the background facts, that the victims' wills were overborne. This is neither novel theory nor outside the general area of expertise of a psychologist or psychiatrist. It is certainly not the application of a scientific test.

The majority assumes that opinion testimony offered like that of Dr. Stock's must be submitted to the *Green* test for scientific evidence. Yet, the rationale for such a test, as explained by this court in *United States v. Brown*, 557 F.2d 541 (6th Cir. 1977), does not support such a conclusion:

> "There are good reasons why not every ostensibly scientific technique should be recognized as the basis for expert testimony. Because of its apparent objectivity, an opinion that claims a scientific basis is apt to carry undue weight with the trier of fact. In addition, it is difficult to rebut such an opinion except by other experts or by cross-examination based on a thorough acquaintance with the underlying principles. In order to prevent deception or mistake and to allow the possibility of effective response, there must be a demonstrable, objective procedure for reaching the opinion and qualified persons who can either duplicate the result or criticize the means by which it was reached, drawing their own conclusions from the underlying facts."

557 F.2d at 556 (quoting *United States v. Baller*, 519 F.2d 463, 466 (4th Cir.), *cert. denied*, 423 U.S. 1019 (1975)).

This statement indicates the two traditional concerns involved with scientific testimony: (1) that objective scientific testimony will bear an "aura of special reliability and trustworthiness," *Brown*, 557 F.2d at 556, and (2) that a "minimal reserve of experts exist who can critically examine the validity of a scientific determination in a particular case," *United States v. Addison*, 498 F.2d 741, 744 (D.C. Cir. 1974). Neither of these concerns is implicated by the testimony of Dr. Stock.

Dr. Stock's testimony on the state of mind of the victims was not predicated on a scientific technique but on the type of subjective analysis that a clinical psychologist is trained to perform. In a recent case, the California Supreme Court rejected the argument that expert psychological testimony should be subject to the same test as scientific testimony:

> It is important to distinguish in this regard between expert testimony and scientific evidence. When a witness gives his personal opinion on the stand—even if he qualifies as an expert—the jurors may temper their acceptance of his testimony with a healthy skepticism born of their knowledge that all human beings are fallible. But the opposite may be true when the evidence is produced by a machine: like many laypersons, jurors tend to ascribe an inordinately high degree of certainty to proof derived from an apparently "scientific" mechanism, instrument or procedure. Yet the aura of infallibility that often surrounds such evidence may well conceal the fact that it remains experimental and tentative.
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> * * *
>
> Here, by contrast, no such methods are in issue. We have never applied the *Kelly-Frye* rule to expert medical testimony, even when the witness is a psychiatrist and the subject matter is as esoteric as the reconstitution of a past state of mind or the prediction of future dangerousness, or even the diagnosis of an unusual form of mental illness not listed in the diagnostic manual of the American Psychiatric Association . . . .

People v. McDonald, 37 Cal.3d 351, 690 P.2d 709, 723-24, 208 Cal. Rptr. 236 (1984) (permitting expert psychological testimony on eyewitness identification). *See also United States v. Metzger*, 778 F.2d 1196 (6th Cir. 1985) (expert opinion as to cause of explosion based in part on comparison

between actual explosion and demonstration does not claim a "scientific basis," but falls more properly within "other specialized knowledge" category of Fed. R. Evid. 702; as such, it does not carry with it any "aura" of special reliability and general acceptance in the particular field is not required).

Likewise, the second concern, relative to whether experts exist who can effectively refute the scientific evidence being admitted, is not relevant. Here, the defense produced two experts who differed with and effectively criticized Dr. Stock's testimony. The defense was not prejudiced by being unable to locate experts to respond to Dr. Stock's testimony.[4]

Moreover, to the extent that the *Brown* court suggested that it is somehow unfair to burden the defendant with the necessity of obtaining experts to rebut the prosecution's case, or to gain a thorough acquaintance with the underlying principles of the expert's testimony, such a suggestion was explicitly rejected by the Federal Rules of Evidence. *See* Notes of Advisory Committee to Fed. R. Evid. 705 (rule "assumes that the cross-examiner has the advance knowledge which is essential for effective cross-examination").

The *Green* test is actually derivative of *Frye v. United States*, 293 F.2d 1013 (D.C. Cir. 1923). *But see infra* Part C. It is therefore noteworthy that the court which first introduced the *Frye* standard for testing the admissibility of novel scientific evidence has stated that the standard applies to "questions of admissibility of expert testimony based on new methods of *scientific measurement* ...." *United States v. Addison*, 498 F.2d at 743 (emphasis added).[5]

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[4]It appears clear from the record that the government knew it would have to present testimony on the victims' state of mind in a case where there was an obvious lack of physical restraint present. The defense was always aware of this and prepared accordingly.

[5]The *Frye* test has been the subject of vigorous criticism. *See United States v. Downing*, 753 F.2d 1224, 1235-37 (3d Cir. 1985), and authorities cited therein. The courts that have moved away from *Frye* have adopted a reliability test. *See Downing*, 753 F.2d at 1238 (relying in part on this court's opinion in *United States v. Franks*, 511 F.2d 25, 33 n.12 (6th Cir.), *cert. denied*, 422 U.S. 1042 (1975)); 3 J. Weinstein & M. Berger, *Weinstein's Evidence* § 702[03] at 702-18 to 702-20; *United States v. Williams*, 583 F.2d 1194 (2d Cir.), *cert. denied*, 439 U.S. 1117 (1979).

The concerns contemplated by the *Green-Frye* test can be adequately addressed by Rule 403 in these circumstances. For instance, the unwarranted "aura of reliability" that may surround the evidence may be assessed by its tendency, if any, to mislead the jury. *United States v. Downing*, 753 F.2d 1224, 1239 (3d Cir. 1985); *see also* McCormick, Handbook of the Law of Evidence § 203 at 608-609 (3d ed. 1984).[6] And to the extent that the *Green-Frye* standard works to assure the availability of more than one expert on the topic involved, that value can be preserved under the Federal Rules of Evidence as well. Courts may consider the availability of experts to evaluate the evidence in determining whether undue prejudice might result from its admission.

Since we are considering this case *en banc*, it would be an appropriate time to reconsider the premise in *Green* that expert testimony in criminal cases should be judged by a different standard than in civil cases. This result is certainly not dictated by the Federal Rules of Evidence which were relatively new at the time *Green* was decided. It appears to me that the fact that a jury, after consideration of all the evidence, including any expert opinions allowed into evidence, must find the defendant guilty beyond a reasonable doubt is all the differentiation that is necessary or called for.

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[6]Jury instructions are also a tool for dispelling an unwarranted aura of reliability, as jurors are usually instructed, as they were here, that they should give an expert's opinion only such weight as they think it deserves, and should reject it if they "conclude that the reasons given in support of the opinion are not sound." (App. 154.)

B.

Assuming, however, that the majority is correct in going on to apply the four part test of *Green*, the first inquiry is whether the expert is qualified. No one here has challenged the qualifications of Dr. Stock, and in fact, he appears eminently qualified to offer an opinion on the victims' state of mind.[7] The second element, whether the subject is a proper one for expert testimony, has been implicitly answered by this court's definition of involuntary servitude. The first prong of the majority's test is that "the servant believes that he or she has no viable alternative but to perform service for the master." Consequently, the servant's state of mind is a crucial factor in this formula. The majority has, however, undercut its adoption of this standard with its conclusion that the type of expert testimony offered here on the victims' state of mind is inadmissible. If the proposition is accepted that something less than actual physical restraint can result in violation of the statute prohibiting involuntary servitude, particularly in the case of a victim who is mentally incompetent and may thus become an involuntary servant by virtue of the master's deceit or fraud, then any qualified psychiatrist or psychologist should be able to testify that in a particular instance the will of the victim was overborne to the point that his service was involuntary.

The third inquiry is, of course, the crucial one here; that is, whether the testimony is in "conformity with a generally accepted explanatory theory." 548 F.2d at 1268. As stated above, this element has its genesis in *Frye*. At the same time, it has undergone a subtle but important change.

The court in *Frye* held:

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[7]By "qualified" I mean to suggest more than just paper credentials. Here, Dr. Stock had worked with the victims and conducted extensive testing. He was completely familiar with their long period of servitude and the circumstances surrounding it.

> Just when a scientific principle or discovery crosses the line between the experimental and demonstrable stages is difficult to define. Somewhere in this twilight zone the evidential force of the principle must be recognized, and while courts will go a long way in admitting expert testimony deduced from a well-recognized scientific principle or discovery, the thing from which the deduction is made must be sufficiently established to have gained *general acceptance in the particular field in which it belongs.*

293 F. at 1014 (emphasis added). "General acceptance in the particular field in which it belongs" is the criterion still widely applied today. Yet in *Green*, this standard has become "conformity to a generally accepted explanatory theory." The distinction is important because in *Frye* the emphasis was placed upon the technique or methodology employed to reach a result, yet in *Green* the focus has been transferred to the theory. In other words, rather than assessing the "thing from which the deduction is made," we have focused on the deduction itself.

When adopting the *Green* test, the court relied on *United States v. Amaral*, 488 F.2d at 1152, where the Ninth Circuit stated: "Because of the peculiar risks of expert testimony, courts have imposed an additional test, i.e., that the testimony be in accordance with a generally accepted explanatory theory." In support of this characterization, the Ninth Circuit cited *Frye* and *United States v. Stifel*, 433 F.2d 431 (6th Cir. 1970), *cert. denied*, 401 U.S. 994 (1971). *Stifel* correctly sets forth the language used in *Frye*, 433 F.2d at 438, 441 (record affords support for the proposition that neutron activation analysis has gained "general acceptance in the particular field in which it belongs"). The Ninth Circuit has never cited *Amaral* for "conformity to a generally accepted explanatory theory."[8]

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[8]In fact, the Ninth Circuit has apparently adopted a "reliability" standard. *See United States v. Gwaltney*, 790 F.2d 1378, 1382 (9th Cir.

In applying this factor, the majority concludes that Dr. Stock's testimony is inadmissible because a foundation was not laid to establish its conformity to a generally accepted explanatory theory. In arriving at this conclusion, the court relies on the testimony of defendants' experts who criticized Dr. Stock's theory. In addition, the majority, after listing the elements of captivity syndrome, determines that the facts presented at trial do not support the existence of these factors. Accordingly, the court holds that captivity syndrome is inapplicable as a matter of law.

While this type of analysis may be compelled by the *Green* formula, I have serious concerns with it. The majority frames the evidentiary inquiry as whether Dr. Stock's theory of involuntary conversion as applied to this case is in conformity with captivity syndrome. It is unclear why Dr. Stock's theory must completely track captivity syndrome. If the court is saying that involuntary conversion must have gained general acceptance in the particular field in which it belongs, and the field is captivity syndrome, the basis for making that conclusion has not been specified. The only field involved here is psychology or psychiatry. The only testimony as to what class of experts would be qualified to express an opinion on these issues was Dr. Stock's testimony that forensic psychiatrists or psychologists would have such expertise (App.75).

After determining that Dr. Stock's theory must be in conformity with captivity syndrome, the majority concludes it is not by relying on the testimony of the other experts. In other words, the court found the defense experts to be more believable and has determined the admissibility of Dr. Stock's testimony based on a credibility finding. This weighing of testimony clearly usurps the function of the jury in deciding which expert, if any, should be believed.[9]

1986) (proponent of scientific evidence has burden of laying a proper foundation showing the underlying scientific basis and reliability of the expert's testimony); *Brown v. Darcy*, 783 F.2d 1389, 1396 (9th Cir. 1986).

Next, the court determines that captivity syndrome is inapplicable based on the facts of this case. Yet, during trial, there was testimony on many, if not all, of the ten elements of captivity syndrome.[10] It is my understanding that the jury determines whether or not the facts which are necessary to validate an expert's opinion are present.

The majority interpretation raises, in turn, the question of what "conformity" to a generally accepted theory means. The court concludes that because the "captivity" here differs from the type of restraint present in the classic captivity syndrome case, Dr. Stock's theory is not in conformity with captivity syndrome. This presents a problem because Dr. Stock testified that not all elements of captivity syndrome would have to be present and that captivity syndrome would have a reliability of a low probability of applicability to a high

[9]As stated by the court in *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. App. 1979):

> For example, if there were conflicting experts, would the judge conclude that neither could testify? That only the more persuasive one could? That a psychiatrist could while a psychologist could not? The judge's role is properly limited to verifying credentials, including findings that the scientific field is generally recognized and that the methodology proffered is generally accepted by the expert's colleagues in the field. The judge is not to take over the jury's function of weighing the persuasiveness of the testimony.

407 A.2d at 638-39 n.24.

[10]For instance, there was testimony that the victims were told repeatedly not to leave the farm and that they were retrieved if they did; that the farm was an isolated environment; that social supports were removed in that family members were discouraged from seeing the victims and that the victims were repeatedly told that no one cared about them; that their personalities were attacked by constant verbal abuse; that the victims lacked privacy; that they were punished and sometimes rewarded; and that they were physically abused.

probability of applicability depending on the environmental restrictions, constraints, and manipulations that were conveyed. Essentially, the court has itself determined that there is a low probability of applicability because it has concluded from the facts presented at trial that the environmental restrictions here differed from that of classic captivity syndrome. It seems that "in conformity" must, at least in this case, actually be interpreted as "exactly the same."

The court, in a criminal jury trial, is neither a fact finder nor a weigher of credibility. To evaluate the theory that a person not physically captive may undergo an involuntary conversion, a court correctly evaluates the methodology utilized to arrive at that conclusion, but not the conclusion itself, which is the province of the jury. The methodology employed by Dr. Stock was a careful, detailed, and lengthy examination of the victims and the facts surrounding their alleged captivity. It is not open to question nor is the argument made by anyone here that that is not an appropriate methodology.[11]

Accordingly, the third element of the *Green* test, perhaps inadvertently, places courts in the position of evaluating experts' conclusions. The court's role is more properly limited to finding that the expert's methodology is generally accepted. The court should not take over the jury's function of weighing the persuasiveness of the testimony.

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[11]It is interesting to speculate on the result on this issue if Dr. Stock had not referred to captivity syndrome, but had simply testified that, based on his interviews with and testing of the victims, and his training and experience in this field, in his opinion their wills were overborne and consequently their service was involuntary. This is an entirely plausible scenario in view of Fed. R. Evid. 705, which allows experts to testify without prior disclosure of the underlying facts or data which led to their opinion. It would indeed be ironic if Dr. Stock's testimony was not allowed because he referred to an established branch of learning, captivity syndrome, to bolster his conclusion that Fulmer and Molitoris were psychological hostages.

C.

The standard of review on appeal of the admission of testimony is abuse of discretion. In order to determine whether the trial judge abused his discretion, we must view the record as it was at the time the ruling was made. At that point in time, the only testimony before Judge Joiner was Dr. Stock's, and he testified that his theory was generally accepted.

Dr. Stock testified that involuntary conversion has gained general acceptance throughout the psychiatric and psychological community (App. 51, 35). Judge Joiner found that the testimony could be helpful to the trier of fact to understand the evidence under Fed. R. Evid. 702. Moreover, Judge Joiner also recognized that the *Frye* standard might not be applicable to this type of testimony, but he felt that even if the court was to apply the more restrictive *Frye* test, the testimony was still admissible:

> It's not an answer, in the Court's judgment, that this may be the very first time that someone has said something in court, otherwise, we would never have any testimony in court about any new idea if we prevented that, but he has demonstrated to the Court that the body of experts that seem to be relevant at this point have generally accepted the concepts and idea that he is going to talk about, and he now is in the process of simply taking those ideas, which have general acceptance among a broad, relative and important class of experts, and attempting to apply them to a particular set of facts in this case, and if there is objection to the testimony it's argumentative objection in the sense that ultimately it may be that the testimony may not have value because the particular facts in the case do not support the underlying basis on which he is going to base his conclusions, and that is something that lawyers are most expert in bringing out on cross-examination.

It's simply no different than a diagnosis of tuberculosis or other things of that kind, it seems to me, at that point. So I'm going to permit the testimony to be received.

(App. 55.)

Judge Joiner's ruling properly recognized the role of the trial judge in admitting expert testimony. This ruling was correct, especially in light of the fact that the only testimony before the court was that involuntary conversion had gained general acceptance. Even though the defendants had retained experts to testify on their behalf, none of the defendants sought to offer evidence at the time that Dr. Stock was voir dired that involuntary conversion was not generally accepted. Yet defendants possessed at that time the information they now rely on in arguing that Dr. Stock's theory was not generally accepted.[12] I am simply unable to conclude that on this record Judge Joiner abused his discretion in admitting the testimony of Dr. Stock.

III.

I would address one other issue raised on appeal and not addressed by the majority which could be involved in any retrial of this matter. On appeal, the defendants also argued that the trial judge erred in failing to rule on Dr. Stock's qualifications as an expert. At trial, after counsel for the government questioned Dr. Stock about his education and experience, the following colloquy occurred:

Counsel: Your Honor, we would offer Dr. Stock

[12]In *Brown*, the court noted that when a defendant fails to produce rebuttal testimony when given the opportunity to do so, he runs a grave risk that an appellate court will focus on the state of the record at the time the evidence was admitted in deciding whether the trial court abused its discretion. 557 F.2d at 557 n.17. It seems to me that defendants have taken that gamble here, and it has paid off.

as an expert in the field of Forensic Psychiatry and offer his expert testimony to the jury.

The Court: I don't pass on qualifications, it's up to the jury to. Go ahead and interrogate him.

(App. 101).

The defendants assert that it was error for the court to decline to specifically find that Dr. Stock was qualified. I must disagree.

When the attorney conducting the direct examination of an expert witness concludes that portion of the examination relating to the expert's qualifications, it is common to so indicate to the court in language not unlike that quoted here. The person offering the expert is not seeking a ruling but, rather, signalling that the preliminaries are over and the other side may now voir dire if they desire. If the other side conducts a voir dire and then objects or just objects without a voir dire, the court must then make a ruling *if it is possible to do so*. Often it is not because the key question is not the expert's general qualifications in some field, but whether the precise question on which he will be asked to *opine* is within his field of expertise or meets some other test such as that set forth in the majority opinion. To illustrate here, the question was not Dr. Stock's qualifications—those were impeccable. The question was what he was going to be asked which would trigger an answer comprising an "expert opinion." Obviously, no ruling can be made until the expert is actually asked the question. Certainly the trial judge must rule upon the qualifications of an expert *if challenged* and must make all evidentiary rulings required by objections to specific questions. The Federal Rules of Evidence do not require the "proffering" of an expert as such, however.

The error of the defendants' argument is compounded by the fact that the procedure suggested exacerbates the very thing about which they express concern—an "aura of special reliability" surrounding expert testimony. If the prosecutor

in a criminal case completes the background questioning of an expert witness and then turns to the court and says, "I offer this person as an expert," the response should be just what Judge Joiner replied. It is not for the court to add to an "aura of reliability" at this juncture by declaring the witness an expert. The evidentiary matter at issue is the giving of opinion testimony. The requisite rulings will be made when an "expert" is asked to opine. Any ruling prior to that, unless in response to an objection, appears to me to be some type of advisory opinion for which there is no predicate in the Federal Rules of Evidence.

APPENDIX

Appendix to Opinion of the Court: Historical Development of 18 U.S.C. § 1584

	Act of March 2, 1807, Ch. 22, §6, 2 Stat. 427	Act of April 20, 1818, Ch. 91, §6, 3 Stat. 452
Slave Trade Statute	Sec. 6. And be it further enacted, That if any person or persons whatsoever, shall, from and after the first day of January, one thousand eight hundred and eight, purchase or sell any negro, mulatto, or person of colour, for a slave, or to be held to service or labour, who shall have been imported, or brought from any foreign kingdom, place, or country, or from the dominions of any foreign state, immediately adjoining to the United States, into any port or place within the jurisdiction of the United States, after the last day of December, one thousand eight hundred and seven, knowing at the time of such purchase or sale, such negro, mulatto, or person of colour, was so brought within the jurisdiction of the United States, as aforesaid, such purchaser and seller shall severally forfeit and pay for every negro, mulatto, or person of colour, so purchased or sold as aforesaid, eight hundred dollars, one moiety thereof to the United States, and the other moiety to the use of any person or persons who shall sue for and prosecute the same to effect. Provided, that the aforesaid forfeiture shall not extend to the seller or purchaser of any negro, mulatto, or person of colour, who may be sold or disposed of in virtue of any regulation which may hereafter be made by any of the legislatures of the several states in that respect, in pursuance of this act, and the constitution of the United States.	Sec. 6. And be it further enacted, That if any person or persons whatsoever shall, from and after the passing of this act, being within the jurisdiction of the United States, in any manner whatsoever, any negro, mulatto, or person of colour, from any foreign kingdom, place, or country, or from sea, or shall hold, sell, or otherwise dispose of, any such negro, mulatto, or person of colour, so brought in, as a slave, or to be held to service or labour, or be in any wise aiding or abetting therein, every person so offending shall, on conviction thereof by due course of law, forfeit and pay, for every such offence, a sum not exceeding ten thousand nor less than one thousand dollars, one moiety to the use of the United States, and the other to the use of the person or persons who shall sue for such forfeiture, and prosecute the same to effect, and, moreover, shall suffer imprisonment, for a term not exceeding seven years nor less than three years.
"Peonage" Statute		

Appendix to Opinion of the Court: Historical Development of 18 U.S.C. § 1584

Act of June 23, 1874, Ch. 464, 18 Stat. 251	Act of March 4, 1909, Ch. 321, §§ 248, 271, 35 Stat. 1139-42	Act of June 25, 1948, Ch. 645, 62 Stat. 773 (codified at 18 U.S.C. § 1584 (1982))
	Sec. 248. Whoever brings within the jurisdiction of the United States, in any manner whatsoever, any person from any foreign kingdom or country, or from sea, or holds, sells, or otherwise disposes of, any person so brought in, as a slave, or to be held to service or labor, shall be fined not more than ten thousand dollars, one half to the use of the United States and the other half to the use of the party who prosecutes the indictment to effect, and, moreover, shall be imprisoned not more than seven years.	§ 1584. Sale into involuntary servitude Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than five years, or both
Chap. 464. An act to protect persons of foreign birth against forcible constraint or involuntary servitude Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever shall knowingly and wilfully bring into the United States, or the Territories thereof, any person unlawfully or forcibly kidnapped in any other country, with intent to hold such person so unlawfully or kidnapped in confinement or to any involuntary servitude, and whoever shall knowingly and wilfully sell, or cause to be sold, into any condition of involuntary servitude, any other person for any term whatever, and every person who shall knowingly and wilfully hold to involuntary service any person so sold and brought, shall be deemed guilty of a felony, and on conviction thereof, be imprisoned for a term not exceeding five years and pay a fine not exceeding five thousand dollars.	Sec. 271. Whoever shall knowingly and willfully bring into the United States or any place subject to the jurisdiction thereof, any person unlawfully or forcibly kidnaped in any other country, with intent to hold such person so unlawfully or kidnaped in confinement or to any involuntary servitude, or whoever shall knowingly and willfully sell, or cause to be sold, into any condition of involuntary servitude, any other person for any term whatever, or whoever shall knowingly and willfully hold to involuntary servitude any person so brought or sold, shall be fined not more than five thousand dollars and imprisoned not more than five years.	

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 84-1288

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE

v.

IKE KOZMINSKI, MARGARETHE KOZMINSKI,
AND JOHN KOZMINSKI, DEFENDANT-APPELLANTS

On Appeal From the United States District Court
For the Eastern District of Michigan

DECIDED AND FILED AUGUST 23, 1985

Before: LIVELY, Chief Judge; MARTIN and KRUPANSKY, Circuit Judges.

MARTIN, Circuit Judge, delivered the opinion of the Court, in which LIVELY, Chief Judge, joined. KRUPANSKY, Circuit Judge (pp. 9-35) delivered a separate dissenting opinion.

BOYCE F. MARTIN, JR., Circuit Judge. In this unusual case, the defendants appeal their conviction for conspiring to deprive Robert Fulmer and Louis Molitoris of their civil rights in violation of 18 U.S.C. § 241[1] and for holding the same two

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[1] 18 U.S.C. § 241 provides, in pertinent part:

persons to involuntary servitude in violation of 18 U.S.C. § 1584.[2] The defendants are Ike Kozminski, a Michigan farmer, his wife, Margarethe Kozminski, and their son, John Kozminski. The defendants claim that the district court erred in admitting certain expert testimony, that the district court used unconstitutional jury instructions, and that the evidence was insufficient to support the verdict.

The events leading up to this case began in 1967 when Margarethe Kozminski picked up Robert Fulmer while he was walking down the road and took him to work on the family's farm. At that time, Fulmer was working at another farm, and Mrs. Kozminski simply left a note to Fulmer's employer saying Fulmer had left. At that time, Mrs. Kozminski told several people that she had kidnapped Fulmer.

Louis Molitoris came to the Kozminski farm in the early 1970's. Molitoris had been living on the streets of Ann Arbor, Michigan, and Mr. Kozminski would sometimes allow him to sleep in Kozminski's barber shop to stay warm. Shortly after they met, Mr. Kozminski took Molitoris to the Kozminski farm to work.

Both Fulmer and Molitoris are mentally retarded. Fulmer has an I.Q. of 67, and Molitoris has an I.Q. of only 60. Neither Fulmer nor Molitoris can read or write, and both need a considerable amount of supervision to perform work.

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; . . .
>
> They shall be fined not more than $10,000 or imprisoned not more than ten years, or both . . . .

[2] 18 U.S.C. § 1584 provides:

> Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

The Kozminskis worked Fulmer and Molitoris extremely long hours. Their days often began at 3:00 A.M. and lasted until 8:30 in the evening. Fulmer and Molitoris received no salary, and the only money they were given was small gifts on holidays and for the county fair. They never received any vacation.

Fulmer and Molitoris were found living in a dilapidated trailer with no bathroom facilities, no heat, and no running water. The two men slept on cots with no sheets, and the two were dressed in ragged, second-hand clothing. Both men were in poor physical condition when they were taken from the farm, and Molitoris was substantially underweight.

There was considerable evidence that the Kozminskis and other farm employees, at the Kozminskis' direction, verbally and physically abused Fulmer and Molitoris. On one occasion, Mr. Kozminski hit Molitoris in the face and cut his eye. The Kozminskis also refused to provide adequate medical treatment to the two men. In one case, Fulmer cut off the tip of his thumb, and Mrs. Kozminski would not let him go to the hospital.

The Kozminskis also attempted to limit greatly Fulmer's and Molitoris' contact with the outside world. The Kozminskis instructed visitors to the farm not to speak to the men, and Fulmer and Molitoris were similarly instructed not to speak to visitors. When relatives of Fulmer and Molitoris called, they were discouraged by the Kozminskis from talking to the two men.

There was also considerable evidence that Fulmer and Molitoris had sought to leave the farm. Several witnesses testified that the two men had asked for their assistance in escaping from the farm. On a number of occasions, Fulmer or Molitoris had left the farm, only to be returned by the Kozminskis or one of their employees.

Based on this evidence, the jury found all three defendants guilty of the conspiracy charge, and found Ike and Margarethe Kozminski guilty of the involuntary servitude counts. Ike

Kozminski received a suspended sentence, was fined $20,000, and was ordered to pay restitution of $6,190.80 to each of the two men. Margarethe Kozminski also received a suspended sentence and was made jointly liable for the restitution. John Kozminski likewise received a suspended sentence and was fined $10,000.

The defendants' first argument is that the district court improperly admitted the testimony of Dr. Harley Stock, an expert witness for the prosecution. Dr. Stock testified on two matters. First, he testified as to Fulmer's and Molitoris' low mental capacity. With respect to this testimony, he related the results of several basic psychological tests that gauged the two men's mental status. Second, Dr. Stock testified to the existence of a psychological phenomenon called "captivity syndrome" that had been discussed in the psychological literature. Dr. Stock stated that when a certain ten or eleven factors are found to exist in a hostage-type situation,[3] this captivity syndrome will ensue, and the victim will essentially be brainwashed or, as Dr. Stock described it, will undergo involuntary conversion. As a result of this involuntary conversion, the victims' attitude toward their captors changes, and the victims can become compliant to their captors' demands. Dr. Stock opined that Fulmer and Molitoris had undergone such an involuntary conversion, and that because of this, they were psychologically incapable of escaping from the Kozminskis' farm, although they physically may have been able to do so.

The defendants challenge the admissibility of this testimony under Federal Rule of Evidence 702. That Rule states:

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[3] The ten factors that Dr. Stock outlined as indicating captivity syndrome are: (1) prolonged conduct; (2) that is continuous; (3) that is carried out in relative isolation; (4) that removes social support — particularly family support — structures from the victims; (5) that attacks the personality of the victim, focusing on a particular weakness, *e.g.*, calling the victim "stupid" or "dumb"; (6) that limits a victim's privacy; (7) that attacks the entire personality, making a victim completely dependent on the captor; (8) that utilizes a system of rewards and punishments; (9) that tears away any resistance to the old personality; and (10) that transforms the victim into a childlike, compliant personality.

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

In applying this rule, this Court has adopted a four-point analysis. For expert testimony to be admissible under Rule 702, it must be shown that the witness is (1) a qualified expert; (2) testifying on a proper subject; (3) in conformity to a generally accepted explanatory theory; (4) the probative value of which outweighs any prejudicial effect. *United States* v. *Green*, 548 F.2d 1261, 1268 (6th Cir. 1977); *United States* v. *Smith*, 736 F.2d 1103, 1105 (6th Cir.), *cert. denied*, 105 S. Ct. 213 (1984). A district court's decision to admit expert testimony shall not be reversed unless there was a clear abuse of discretion. *See United States* v. *Green*, 548 F.2d at 1268. We shall find an abuse of discretion only if we have "a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." *Taylor* v. *United States Parole Commission*, 734 F.2d 1152, 1155 (6th Cir. 1984) (citations omitted).

In this case, the defendants argue that Dr. Stock's testimony failed to meet the first and third criteria set out above. With regard to the first criterion, the defendants do not argue that Dr. Stock was not a qualified expert; they simply argue that the district court failed to find that he was a qualified expert. This argument is unavailing, however, because trial counsel for the defendants failed to object when Dr. Stock was offered as an expert witness. Fed. R. Evid. 103. This was also not plain error as Dr. Stock's credentials were outstanding and defense counsel had ample opportunity to challenge Dr. Stock's credentials during a lengthy voir dire.

The defendants' objection to Stock's testimony based on the

third criterion is misguided. To exclude evidence based on the third criterion, the defendants must show that the captivity syndrome is not a generally accepted explanatory theory. Yet in voir dire at trial, and in their briefs before this Court, the defendants do not seem to dispute that the captivity syndrome is a generally accepted explanatory theory;[4] they instead argue that the theory has never been applied to a case such as this.[5] The defendants maintain that the theory had been and could be applied only in those instances where the victim, such as a prisoner of war, was held captive physically for a period of time.

Viewed in this light, the defendants' argument goes not to whether the captivity syndrome is a generally accepted theory, but rather whether this theory is relevant to this case. Thus, it is the fourth criterion outlined above, instead of the third criterion, that is the heart of the defendants' objection. The question therefore should be whether Stock's testimony was more prejudicial than probative. We believe that the district judge did not abuse his discretion in ruling that it was not.

Dr. Stock's testimony on the captivity syndrome was certainly probative. If accepted by the jury, his testimony would help explain why Fulmer and Molitoris, although not physically confined to the Kozminskis' farm, felt psychologically compelled to continue to work on the farm. His testimony thus would help the jury comprehend why the two mens' servitude was involuntary.

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[4] In fact, based on our review of the transcript of voir dire of Dr. Stock, the captivity syndrome is well documented in the psychological literature.

[5] The defendants do challenge Dr. Stock's use of the term involuntary conversion. They claim that no authoritive work refers to the effects of captivity syndrome as involuntary conversion. We view Dr. Stock's use of the term involuntary conversion as merely a description to convey the recognized effects of the captivity syndrome.

The defendants would argue, however, that the testimony is extremely prejudicial because the captivity syndrome had never been applied to an involuntary servitude case and that there was a risk that the jury would unduly rely on Dr. Stock's expert opinion in applying the theory to the facts of the case. *See United States* v. *Brown*, 557 F.2d 541, 556 (6th Cir. 1977). We believe, however, that any such prejudice in this case was greatly vitiated by the fact that the defendants presented two experts who contradicted Dr. Stock's application of the captivity syndrome to this case. Dr. Emanuel Tenay, a psychiatrist, testified, for example, that it was "really ridiculous to apply [the captivity syndrome] to this situation." Given this well-rounded presentation, the jury was perfectly capable of evaluating Dr. Stock's testimony and giving it its due weight. We therefore reject the defendants' argument that Dr. Stock's testimony was improperly admitted.

The defendants next argue that there was insufficient evidence to support their convictions, relying on *Jackson* v. *Virginia*, 443 U.S. 307 (1979). We find this claim to be devoid of merit. Given the low mental competency of the victims, the pattern of verbal and physical abuse, and the defendants' efforts to shut off the victims from the outside world, we believe there was easily sufficient evidence for the jury to conclude that Fulmer and Molitoris were not voluntarily working for the defendants.

The defendants next argue that the involuntary servitude statute, as interpreted by the district court in its jury instructions, is so vague that it violates due process. The district court, relying on *United States* v. *Mussry*, 726 F.2d 1448 (9th Cir.), *cert. denied*, 105 S. Ct. 180 (1984), instructed the jury that involuntary servitude can result whenever the victim of the crime is coerced to continue to work for the perpetrator, whether or not the means of coercion is physical force or legal sanctions. The defendants claim that unless the application of the statute is limited to cases where there is evidence of

physical coercion or legal sanction to force the victim to give his labor, the statute is unconstitutionally vague.

For a statute to survive a vagueness challenge, it must "define the criminal offense with sufficient definiteness [so] that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Koleander* v. *Lawson*, 103 S. Ct. 1855, 1858 (1983). In *Mussry*, the Ninth Circuit discussed at length a vagueness challenge to its interpretation of the involuntary servitude statute. *Mussry*, 726 F.2d at 1454-55. The *Mussry* court, finding that the mens rea requirement vitiated vagueness concerns and stating that ordinary people have fair warning that their conduct may be criminal, upheld the statute as it interpreted it. We find the reasoning in *Mussry* to be persuasive and agree with the Ninth Circuit that a showing of physical force or legal sanctions does not have to be made to avoid vagueness concerns.[4]

Finally, the defendants argue that the restitutionary order was premature because Fulmer and Molitoris have filed a state action seeking back wages. They therefore ask this Court to amend the judgment below to provide that if the two victims recover anything in their civil action, that the restitutionary order is correspondingly reduced. The proper avenue for seeking such relief, however, is under Federal Rule of Criminal Procedure 35 which provides for the correction or reduction of a sentence by the trial court.

Judgment affirmed.

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[4] The defendants also argue that the *Mussry* interpretation of the statute offends the first amendment because it penalizes the defendants for the speech used to coerce the victims. This argument is ludicrous. Speech that is itself criminal conduct is not entitled to protection. *See Village of Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.*, 102 S. Ct. 1186, 1192 (1982).

KRUPANSKY, Circuit Judge, dissenting. The majority's selective interpretation of this circuit's long standing pronouncements in *United States* v. *Green*, 548 F.2d 1261 (6th Cir. 1977); *United States* v. *Brown*, 557 F.2d 541 (6th Cir. 1977); and *United States* v. *Brady*, 595 F.2d 359 (6th Cir.), *cert. denied*, 444 U.S. 862 (1979), and the conflict created thereby, prompts me to respectfully dissent.

This appellate review confronts charged errors committed by the trial court in:

1. Permitting Dr. Harley Stock, a psychologist, to testify to scientific principles and procedures in support of his personally conceived theory of "involuntary conversion" and "psychological hostage," which was not established to have been sufficiently reliable and accurate to find general acceptance in the particular field to which it belongs; and

2. Refusing to exercise its mandatory duty to rule upon the competency of Dr. Stock to testify as an expert in the field of Forensic Psychiatry and permitting him to testify to scientific principles and procedures, which had no recognition or acceptance in the scientific community, in support of his personally conceived theory of "involuntary conversion" and "psychological hostage."

It should be initially noted that the defendants were convicted of a conspiracy to violate the rights of Fulmer and Molitoris to be free from involuntary servitude in violation of 18 U.S.C. § 241 and of actually holding Fulmer and Molitoris to involuntary servitude and preventing them from leaving the farm where they worked in violation of 18 U.S.C. § 1584. Both charges mandate proof of intent to commit the offenses.

It was not the government's theory in presenting this case that either Fulmer or Molitoris were restrained from leaving the farm and the defendants' employment by either physical

force or threats of physical force. Rather, it was the thrust of the government's proof that both Fulmer and Molitoris, as a result of an "involuntary conversion" became "psychological hostages" and lost their "will" to leave the farm and the service of the defendants.

Since Dr. Stock's testimony was the only evidence that addressed the very essence of the government's charges, and was, therefore, the keystone that supported the jury's verdict, without its cohesive effect the conviction could not be sustained.

An appropriate point of departure for this dissent is a definition of and purpose for the rule that identifies the standard to be applied in considering the admissibility of scientific evidence in the form of expert testimony.

The rule is simply stated in *United States* v. *Brown*, 557 F.2d 541, 556 (6th Cir. 1977), and echoed in its progeny within and without this circuit in the following language:

> A necessary predicate to the admission of scientific evidence is that the principle upon which it is based "must be sufficiently established to have gained general acceptance in a particular field to which it belongs." *Frye* v. *United States*, 54 App.D.C. 46, 293 F. 1013, 1014 (1923). In *United States* v. *Franks*, 511 F.2d 25, 33 n.12 (6th Cir. 1975) we equated general acceptance in the scientific community with a showing that the scientific principles and procedures on which the expert testimony is based are reliable and sufficiently accurate.

The purpose for the rule is equally simple. It evolved to avoid the potential prejudicial impact of "the aura of special reliability and trustworthiness" which attaches to expert testimony admitted without proper foundation which may confuse or mislead the trier of fact and thus defeat a defendant's right to a fair trial.

Perhaps the purpose behind the rule is best articulated in *Brown*, 557 F.2d at 556, where this court admonished:

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> A courtroom is not a research laboratory. The fate of a defendant in a criminal prosecution should not hang on his ability to successfully rebut scientific evidence which bears an "aura of special reliability and trustworthiness," although, in reality the witness is testifying on the basis of an unproved hypothesis in an isolated experiment which has yet to gain acceptance in its field. *See e.g., United States* v. *Amaral*, 488 F.2d 1148, 1152 (9th Cir. 1973); *Frye* v. *United States*, 293 F. at 1014.

The permissible limits of expert testimony have been traditionally delegated to the sound discretion of the trial court. The scope of this discretion has been broadly construed, and the trial court's exercise of its discretion is to be sustained "unless it is manifestly erroneous." *Brown*, 557 F.2d at 556; *United States* v. *Green*, 548 F.2d 1261, 1268 (6th Cir. 1977). *See also United States* v. *August*, 745 F.2d 400, 407 (6th Cir. 1984). However, such discretion must be exercised, on an ad hoc basis, by balancing the probative value of the evidence against its prejudicial effect upon the defendants' right to a fair trial. *See* Fed.R.Evid. 403.

This dissent recognizes and endorses the proposition that absolute certainty of result or unanimity of scientific opinion is not required for admissibility so long as the conflicting testimony concerning the conclusions drawn by the experts are based on generally accepted and reliable scientific principles.

Having reviewed the rule that is decisive to the admissibility of a scientific explanatory theory and the purpose for its existence, it is obvious that expert testimony is not permissible in every case where the witness purports to base his testimony on ostensible scientific principles. *See e.g., Frye* v. *United States*, 292 F. 1013 (D.C. Cir. 1923); *United States* v. *Franks*, 511 F.2d 25, 33 n.12 (6th Cir.) *cert. denied*, 422 U.S. 1042 (1975); *United States* v. *Green*, 548 F.2d 1261 (6th Cir. 1977); *United States* v. *Brown*, 557 F.2d 541 (6th Cir. 1977); *United States* v. *Brady*, 595 F.2d 359 (6th Cir.), *cert. denied*, 444 U.S. 862 (1979); *United States* v. *Amaral*, 488 F.2d 1148 (9th Cir. 1973).

Mindful of the rule, its purpose and the parameters of its application, this dissent attempts to present an analysis of the scientific conclusions and theories applied by Dr. Stock to the facts of this case.

Although the thumbnail sketch of the facts related by the majority opinion is substantially accurate, an enlargement of the operative circumstances would place the appeal into a more objective and less emotional perspective.

It is conceded that both Fulmer and Molitoris were mentally retarded, however, not to the degree inferred by the majority. The record reflects that both individuals had an acute awareness of their past activities, their existing environment, working conditions and their general responsibilities and duties. They were well oriented. Their personal appearance, hygiene and living conditions within the house trailer furnished by the defendants were of their own choice. Running water, soap and showers were always available to them in the bunkhouse. The defendants imposed no regimen upon the lifestyles adopted by the two men. As a matter of fact, although the Kozminskis resided in the vicinity of the farm where Fulmer and Molitoris lived and worked, they seldom visited the farm more frequently than once a week. Fulmer often complained that John Kozminski's single weekly visit was too isolated to provide Kozminski with an insight into the problems inherent to operation of the farm.

Prior to working as a farm hand for the defendants, Molitoris, who was 60 years of age, was a street person who got his food where he found it, "had slept in cardboard boxes in the winter" and in an old ice box and "drank homemade wine." Fulmer, age 59 years, had lived in a foster home from age 5 to 11 years and was thereafter institutionalized where he was taught to work as a farm hand. Upon release from the institution, he drifted from farm to farm performing the same simple, menial chores he performed for the defendants.

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Of greatest significance in addressing the appellants' assignments of error arising from the opinion testimony of Dr. Stock, are the concessions of the parties that (a) neither Fulmer nor Molitoris were ever physically confined or restrained; (b) they were at all times physically free to leave the farm at will; (c) they knew they were free to leave the farm; (d) they did in fact individually and together leave the farm on numerous occasions; (e) they returned of their own accord or were picked up by the defendants as a result of telephone calls from third parties;[1] (f) they associated freely with each other, with other farm hands working the farm, and with neighbors on occasion; (g) they remained at or returned to the defendants' farm, in the words of Fulmer "*because he had no place to go.*"

Dr. Stock tailored his scientific theory for the above related facts and concluded that as a result of the living conditions to which Molitoris and Fulmer were intentionally exposed by the defendants, the two men experienced, in Dr. Stock's coined terminology, an "involuntary conversion," became "psychological hostages" and thus were held to involuntary servitude by the defendants' willful acts as charged in the indictment.

In determining the admissibility of Dr. Stock's expert testimony within the pronouncements of existing precedent as discussed in this dissent, I am directed to the guidelines enunciated in *United States* v. *Amaral*, 488 F.2d 1148 (9th Cir. 1973), and subsequently adopted by this circuit in *Green*, 548 F.2d at 1268, and applied in *Brown*, 557 F.2d at 566, and *United States* v. *Smith*, 736 F.2d 1103, 1105 (6th Cir.), *cert. denied*, 105 S.Ct. 213 (1984):

> Four factors must appear in the record to uphold the admission of expert testimony: 1. qualified expert; 2. proper subject; 3. conformity to a generally accepted explanatory theory; and 4. probative value compared to prejudicial effect.

Brown, 557 F.2d at 556.

[1] On occasions when Fulmer or Molitoris were picked up as a result of telephone calls from third parties, there is no indication that they were forcefully returned to the farm.

The third element enumerated in *Amaral* provides that such expert testimony must be in "conformity to a generally accepted explanatory theory." Implicit in the language is the predicate that the theory be firmly anchored in sound, reliable and sufficiently accurate scientific principles, and sufficiently established to the point of having achieved general acceptance within the particular field to which it belongs. Stated differently, the scientific explanatory theory must have (a) received at least some exposure within the scientific peerage to which it belongs; (b) received peer evaluation to determine its scientific validity and reliability; and (c) achieved general acceptance within the scientific community to which it belongs.

Apart from the comments of his scientific peers, Dr. Stock's own admissions render his conclusions inadmissible under existing legal standards. At the outset, Dr. Stock's progression from "involuntary conversion" through "psychological hostage" to the ultimate result of "involuntary servitude" must be distinguished from his testimonial discussion of "captivity syndrome" and "post-traumatic stress disorder". The distinction is critical to an analysis of his testimony since "captivity syndrome" and "post-traumatic stress disorder" are mutually exclusive and have independent origins as will be more fully hereinafter discussed.

The "captivity syndrome" as a characterized condition, had its genesis as a predictable scientific phenomenon in 1924 when Ivan Pavlov, a Russian physicist, first perceived the relationship between prolonged physical and equivalent mental stress and control of behavior patterns. The subject again received considerable notoriety as a result of a proliferation of

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prisoner of war and concentration camps that existed during World War II.

The practice, characterized in early scientific literature as the Triple-D Syndrome (debility, dependency and dread) was refined into a highly sophisticated effective ordeal by the Chinese during the Korean conflict. In published research, Dr. Robert Lifton, a noted psychiatrist, synthesized the concepts of "captivity syndrome" from his exhaustive studies of returning Americans held captive by the Chinese during the Korean war.

Obvious from the foregoing brief summary, the Triple-D Syndrome currently characterized as "captivity syndrome," had received wide exposure within the scientific community to which it belongs, had been evaluated by the peerage of that scientific community and had received some degree of acceptance within that group, thereby satisfying the third criterion of *Amaral* and its progeny. Equally well recognized within the peer group of psychiatrists and psychologists was the diagnosis of "post-traumatic stress disorder." This diagnosis had, perhaps, received even greater exposure and acceptance than the "captivity syndrome."

It is interesting to note at this juncture that an examination of Dr. Stock's testimony discloses that whenever he resorted to supporting an opinion or conclusion by published research or peer endorsement, he referred, not to his theory of progression from "involuntary conversion" through "psychological hostage" to "involuntary servitude" but rather to the conditions of "captivity syndrome" and "post-traumatic stress disorder," both of which philosophies had received some degree of acceptance within the scientific community to which they belong.

Dr. Stock's damaging, if not fatal, admissions condemned his opinion testimony as a hypothecation that had "attained general acceptance in the scientific community." *Brown* at 556. He readily conceded that he was not aware of *any* literature, let alone published research, that addressed his theory; that

the Diagnostic and Statistical Manual of Mental Disorders (Third Edition), the recognized official authority of the American Psychiatric Association, carried no listing for "involuntary conversion" or "psychological hostage;" that his theory had never received peer recognition; and that he could not correlate his concepts to Dr. Lifton's "captivity syndrome." The coup de grace was, however, delivered by his own statements that his instant testimony represented the first case wherein he advanced his hypothecations of "involuntary conversion" and its relationship to "involuntary servitude."[2] It is no wonder that his peers were initially unaware of his theory, and after having been apprised of his logic, characterized it as exceeding "sound professional practice, confused the situation" and "ridiculous" and an "invention of Stock." Accordingly, the record disclosures make it evident that if, as Dr. Stock testified, his instant testimony was the first public presentation of his theory, it necessarily followed that it never received peer evaluation or validation, let alone recognition as an explanatory theory that had attained general acceptance within the scientific community to which it belonged within

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Q. What is your clinical experience with involuntary servitude as opposed to involuntary conversion?
A. This is actual — this is my first case of involuntary servitude.
Q. So this is the first case that you have dealt with the so-called stress, or whatever — however you want to phrase it — was not immediate and obvious?
A. No. I think the threat in this case was immediate and obvious.
Q. That is the conclusion you reached, isn't it?
A. That is right.
Q. But your testimony is you have never dealt with this type of situation before; isn't that correct?
A. That's correct.
Q. You have never testified with regard to this situation before?
A. Well, if I have never dealt with it, I never could have testified before.
Q. You have never been called upon to make a diagnosis or an evaluation in this area before; is that right?
A. Right.

the mandates of existing precedent. *See Green, Brown, Brady, Franks.*

It is perhaps appropriate at this point to interpose my approval of the pronouncements in *United States* v. *Stifel*, 433 F.2d 431, 438 (6th Cir. 1970), *cert. denied*, 401 U.S. 994 (1971), that "neither newness nor lack of absolute certainty in a test suffices to render it inadmissible in court. Every new development must have its first day in court." The expression in *Stifel*, however, must be tempered with the long-standing teachings of *Green*, *Brown*, *Brady*, and *Franks*. Certainly, the application of *Stifel* would not apply to a theory of first impression as testified to by Dr. Stock.

In *Brown*, this court recognized the hazards of exposing the trier of facts to ostensibly scientific techniques which defied effective response under circumstances where the scientific theory had no demonstrable standard against which it could be evaluated, tested, or duplicated:

> There are good reasons why not every ostensibly scientific technique should be recognized as the basis for expert testimony. Because of its apparent objectivity, an opinion that claims a scientific basis is apt to carry undue weight with the trier of fact. In addition, it is difficult to rebut such an opinion except by other experts or by cross-examination based on a thorough acquaintance with the underlying principles. In order to prevent deception or mistake and to allow the possibility of effective response, there must be a demonstrable, objective procedure for reaching the opinion and qualified persons who can either duplicate the result or criticize the means by which it was reached, drawing their own conclusions from the underlying facts.

Brown, 557 F.2d at 556, *quoting United States* v. *Baller*, 519 F.2d 463, 466 (4th Cir.), *cert. denied*, 423 U.S. 1019 (1975).

The scope and magnitude of the confusion and prejudice generated by Dr. Stock's testimony cannot be fully appreci-

ated without an analysis of his reasoning. Dr. Stock postulated "in this particular case, the basis for the post-traumatic stress disorder as defined in the literature is the captivity syndrome. The captivity syndrome is the underlying event that causes the post-traumatic stress disorder, what occurs to people in captivity." Dr. Stock thereupon developed his logic in the following manner on direct examination:

> Q. Well, isn't it true that you contemplate . . . telling the jurors, if allowed to do so, that the so-called traumatic event occurred?
>
> • • •
>
> A. No. What I am contemplating telling the jurors, if the allegations are true, that it is my opinion, based on information that I had available to me and my knowledge as an expert witness, that these individuals did indeed suffer the captivity syndrome. They suffered from captivity syndrome.

On cross-examination he proceeded:

> Q. Despite the fact there is no literature on that subject at all through the second day of February of 1984 that you are aware of or have read?
>
> A. No. There is a lot of literature about the *captivity syndrome*.
>
> Q. In relation to individuals who supposedly are kept under the conditions which existed here?
>
> A. Yes. In the sense it may not have been called involuntary servitude, but the conditions are analogous to other such happenings.
>
> Q. What were the analogous conditions?
>
> A. Well, Mr. Stringer went through the 11 points. If you would like, I'd be glad to go through it again.
>
> Q. But those were all basically, were they not where

somebody was kidnaped or concentration camps or a prisoner of war camp?

A. That is right.

(emphasis added).

On further direct examination he elaborated:

Q. But you have examined these men and have an opinion as to whether or not they suffer a post-traumatic stress syndrome that would be consistent with a captivity syndrome prior to the time you examined them; is that correct?

A. Yes. Based on my understanding of the scientific literature and my clinical experience in the area.

Q. In fact, they did suffer from the *captivity syndrome* and now, *post-traumatic stress syndrome*, that would have affected their psychological ability to leave or end the – to leave the environment that was causing this syndrome; is that correct?

A. Yes. It seems to me the bottom-line question is if people have an opportunity to escape when they are being held in any situation, why don't they? Captivity syndrome explains that.

THE COURT: Would you tell me how would you define the captivity syndrome?

THE WITNESS: The captivity syndrome, Your Honor, are psychological, are environmental manipulations that occur to make people's normal thinking, feeling and reactions.

Simply stated, Dr. Stock posited that Molitoris and Fulmer developed "captivity syndrome" as a result of the living conditions and treatment imposed upon them by the defendants which induced "post-traumatic stress disorder" that destroyed their will to voluntarily leave the farm and employ of the

defendants, even though they were free to do so, thereby transforming them into "psychological hostages" bound to "involuntary servitude" for the defendants.[3] Dr. Stock further hypothecated that the "captivity syndrome," as discussed by Dr. Lifton in his published research of American prisoners held captive by the Chinese during the Korean war and the "brainwashing" which induced "ideological conversion,"[4] were analogous to the techniques employed by the defendants in their continuing efforts to control Molitoris and Fulmer.

Even the most casual review, however, will disclose that the eleven criteria identified by Dr. Lifton as essential to the "brainwashing" implemented by the Chinese to achieve the thought control necessary to accomplish the "ideological conversion" characterized as "captivity syndrome" are patently incomparable with the living conditions and treatment to which Molitoris and Fulmer were exposed.

Initially, it should be noted that the "brainwashing" techniques employed by the Chinese as studied by Dr. Lifton were scientifically conceived, scientifically implemented and scientifically monitored around the clock. The techniques were professionally structured into a planned systematic pro-

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[3] Direct Examination of Dr. Stock:

Q. Do you have any explanation for their not leaving the farm where they were, the Kozminski farm?

A. Yes, on the surface it appears that they had numerous opportunities to leave, and the question to me, interesting question, is why didn't they.

It's my opinion that they were psychological hostages, that even though they had the physical ability to get away from the farm, they were so tied into the farm that these [defendants] were their only caretakers, they became psychologically substituted parents for them. They could not form the requisite intent to escape . . . .

[4] Although the record discloses that the term "ideological conversion" refers to the efforts of the Chinese to influence the ideological beliefs of American captives with a view toward having them denounce the United States for propaganda purposes, the record does not reflect that the term bears any relationship to the term "involuntary conversion" as coined by Dr. Stock.

gressive program calculated to totally pervert and/or destroy an individual and to change his behavior and his beliefs. Essential to effective metamorphosis of the prisoner was an environment of physical captivity, a realization of the futility of escape or rescue, the use of force or the ever present threat of force and even death.

Only with an insight into the sophisticated techniques utilized by the Chinese in systematically phasing a captive through the stages described by Dr. Lifton's writings as essential to inducing "captivity syndrome," does the attempted correlation of Dr. Lifton's criteria to the living conditions and treatment to which Molitoris and Fulmer were exposed become incomprehensible.[5] The "brainwashing" discussed by Dr. Lifton involved total sensory deprivation. The prolonged confinement of the prisoner was total isolation in a room of limited space without access to any reference point and without hope of escape or rescue; time and all concept of time was eliminated; the prisoner was permitted to see no one but his guard; the prisoner slept only as permitted; he was permitted to hear only what he was intended to hear; he was spoken to only by his captors; he was physically humiliated; he had no toilet facilities; he was permitted no privacy when performing normal bodily functions; he was under around the clock surveillance by his guard; the prisoner was constantly placed in fear of his life. The insidious procedure constituted a total assault on the individual personality calculated to force him to recant all of his personal and

[5] The essential elements for inducing the "captivity syndrome" as enumerated by Dr. Robert Lifton were:

> (1) prolonged captivity; (2) continuous around the clock supervision, such as by guarding; (3) an isolated environment; (4) removal of all supports; (5) an attack on personality; (6) a lack of privacy; (7) assault upon the total personality; (8) a systematic use of reward and punishment; (9) a tearing of the fabric of the personality; (10) the building up of a new personality; and (11) ritualistic behavior which was not considered by Dr. Stock in his analysis.

ideological values and accept the values and beliefs of his captors.

In light of this comparative analysis, any attempt to equate the "brainwashing" practiced by the Chinese to induce Dr. Lifton's "captivity syndrome" with Dr. Stock's "involuntary conversion" and "psychological hostage" was, in the language of Dr. Emanuel Tenay,[6] "ridiculous" and an "invention of Stock." Dr. Robert Walsh[7] characterized Dr. Stock's analogy

[6] Dr. Emanuel Tenay is a graduate from the University of Munich, Germany, School of Medicine. He interned at Michael Reese Hospital in Chicago, Illinois; completed his psychiatric residency at Elgin State Hospital. He attended post graduate school at the University of Michigan. He is licensed as a medical doctor by the State Medical Board of Michigan. He has a specialty in psychiatry and a sub-specialty in forensic psychiatry. He is a diplomat of the American Board of Psychiatry and Neurology and is certified as a specialist by the American Board of Psychiatry and Neurology and also acted on its Board of Examiners. He is a diplomat of the American Board of Forensic Psychiatry. He is a director of the Detroit Receiving Hospital, department of Psychiatry. He enjoys staff privileges at all of the major hospitals in the Detroit area, including Beaumont, Harper, Grace, St. John, Sinai, Cottege Hospital of Grosse Pointe. He is a member of the American Psychiatry Association, a Fellow of the American College of Forensic Sciences, a member and past president of the Michigan Psychiatrists Society and a number of other professional organizations in the immediate geographic area. He has published in excess of seventy professional papers and has lectured to various law enforcement agencies as well as professional groups. He has conducted seminars involving forensic psychiatry throughout the county. He has appeared as a professional witness on behalf of the United States Government in a number of criminal matters, i.e. the Jack Ruby investigation, the Garwood Vietnamese captive case, the Theodore Bunday case. He has written professional papers — treatises on concentration camp survivors and captives of prisoner of war camps. He delivered a paper at an international symposium on the psychiatric aspects of captivity as well as captives of terrorists and hostage situations arising as a result thereof. Dr. Tenay is a friend of Dr. Lifton. He is presently a clinical professor of psychiatry at Wayne State Medical School.

[7] Dr. Robert R. Walsh is a board certified clinical psychologist licensed by the State of Michigan and an employee of the State Prison of Southern Michigan since 1974 where he exercises ultimate responsibility for virtually the total mental health care of approximately 5,000 prisoners residing in the central region of Michigan Department of Corrections. He has a bachelor's and master's degree from Michigan State University and a doctoral degree from the University of Wisconsin at Madison, Wisconsin in Educational Psychology. He is familiar with Dr. Robert Lifton's book as well as the entire spectrum of literature and is a scholar in the field.

as exceeding "sound professional practice and confused the issue."

On voir dire, Dr. Stock under cross-examination conceded:

> Q. Now, sir, is there literature dealing with the subject matter of involuntary servitude as being equatable to involuntary conversion, that you are aware of:
>
> A. Not that I am aware of.
>
> Q. You know of none, right?
>
> A. That's correct.

Both Doctors Tenay and Walsh confirmed that the terms "involuntary conversion" or "psychological hostage" could not be found in any psychiatric or psychological textbook or in any psychiatric or psychological literature.

Even Dr. Stock, in a colloquy with the court stated:

> THE COURT: . . . but is captivity syndrome and involuntary conversion the same thing?
>
> THE WITNESS: . . . well, I guess it's not exactly the same thing. If we look at a circle, the captivity syndrome is another circle.

The interrelationship of a "post-traumatic disorder" diagnosis with Dr. Stock's formulations is more difficult to comprehend. It would appear that under Dr. Stock's reasoning "in this particular case . . . the post-traumatic stress disorder . . . is the captivity syndrome." Dr. Stock previously equated the cause of "captivity syndrome" with the living conditions experienced by Molitoris and Fulmer at the defendants' farm.

There is no controversy between the parties as to a definition of post-traumatic stress disorder. It is well identified by Dr. Walsh:

> It generally requires the individual to have been exposed to a very severe stressor, and the book is very

> clear in giving examples of this. Survivors of the Nazi death camps is one example. A victim of a very, very brutal rape or sexual assault could definitely be P.T.S., post-traumatic syndrome. A victim of a national disaster such as a severe earthquake, tornado or a severe auto accident where they were incapacitated and possibly remained in the wreckage for a long time and in a state of semiconsciousness, this sort of thing is required initially.
>
> Exposure to the stressor which has a delayed response on the person. In the case of the Vietnam veterans, he may have returned back to the United States and to the perception of those around them, assimilated relatively normally and then all of a sudden something happens. Quite often they re-experience the trauma or the stressor.
>
> In the case of the Vietnam veteran it may be the backfiring of an automobile, it may be just a police helicopter or a regular helicopter just in earshot, throwing him back, psychologically back into that condition in the jungles of Vietnam.
>
> • • •
>
> These generally are considered to be a diminished capacity to respond in his or her environment. The reoccurrence of the stimulus event or something remotely resembling it, like the whirring of a helicopter or the backfiring of a car, produces a very, very clear dramatic effect on the individual.
>
> • • •
>
> Again, this is the diagnostic criteria from the manual. The first thing that is required is the existence of a recognizable stressor that would evoke significant symptoms of distress in almost everyone.
>
> And again this is the type of stressor I've mentioned before, very severe, very life-threatening. Generally the individual is in a situation where at least at some point during it they don't know if they are going to survive.

They are really faced with the imminent possibility of death and no control from their perceptual standpoint over it.

Re-experiencing of the trauma as evidenced by at least one of the following: One, recurrent and intrusive recollections of the event. These are very vivid memories or re-experiencing of it, really. As I mentioned before, the veteran walking down the street, for example, that he hears the whirring of a helicopter in the air. Automatically, psychologically and mentally, at that point he is back in Nam. He may start acting very erratically. He may become very dangerous.

• • •

[T]here is a numbing of responsiveness to or reduced involvement with the external world beginning sometime after the trauma as shown by at least one of the following: One, markedly diminished interest in one or more significant activities. Generally you have to know what the person's interests were before. They often withdraw. They may have had a hobby. They may have been good in some particular vocation. They are no longer interested in this, they don't do it. It's a very obvious sign to people around them, spouse, siblings, this sort of thing.

Two, feelings of detachment or estrangement from others. They don't feel part of society anymore, they feel different. They've had this experience. They don't feel close to other people. They feel alienated in a very real sense. You couldn't understand what they experience. You weren't through it, this sort of thing, so there is a tendency to pull away.

Three, constricted effect, which typically means that their emotional responsivity no longer runs the full range that we may experience from euphoria to extreme depression. It's in a much more limited range. It may very well be primarily depressive, and often is, in content. It may be planned. They are not spontaneous, I guess,

is the best word. Spontaneous or full in the range of emotional responsivity that we would be.

I find no dispute among the parties that the essential stressor to a diagnosis of post-traumatic stress disorder is an immediate, obvious, severe life-threatening incident over which the stressee/victim has no perceptual control. Typical examples cited in the literature are victims of the Nazi death camps; victims of a very brutal rape or sexual assault or other violent criminal act; victims of a severe natural disaster such as a violent earthquake, tornado, flood or fire, catastrophe, airplane or automobile disasters, bombing and torture. None of such occurrences are disclosed by the facts depicting the living conditions to which Molitoris and Fulmer were exposed.

With this as background, I am constrained to re-examine Dr. Stock's opinion[8] in an effort to give some fabric to his testimony.

His examination reflects the following dialogue:

Q. But you have examined these men and have an opinion as to whether or not they suffer a post-traumatic stress syndrome that would be consistent with a captivity syndrome prior to the time you examined them; is that correct?

A. Yes. Based on my understanding of the scientific literature and my clinical experience in the area.

Q. In fact, they did suffer from that captivity syndrome and, now, post-traumatic stress syndrome, that would have affected their psychological ability to leave or end the – to leave the environment that was causing this syndrome; is that correct?

---

[8] The essence of Dr. Stock's diagnosis of "post-traumatic stress disorder" was, I presume, to provide substance for his conclusion that both Molitoris and Fulmer, as a result of their living conditions, were so traumatized that they lost their will to voluntarily leave the farm. His expressed conclusion appears to be contradictory in light of his concession to the court that his reports reflected no such diagnosis. Both Drs. Tenay and Walsh also ruled out the diagnosis.

A. Yes. It seems to me the bottom-line question is if people have an opportunity to escape when they are being held in any situation, why don't they? Captivity syndrome exlains that.

He proceeded to develop his logic by stating in response to the court:

THE COURT: What do you describe as the condition that you would define as the captivity syndrome?

THE WITNESS: The condition is the breaking down of free will, of conscious and volitional choice.

THE COURT: And its relevance in this case is what, as you understand it?

THE WITNESS: Explaining why if these people had opportunities to walk way, [sic] why they did not.

Upon further examination by the court, Dr. Stock responded:

Q. There is no place in your report . . . that post-traumatic disorder, either chronic or delayed, exists in this case, is that correct?

A. That's correct.

Upon further examination he conceded that the breaking down of the captives' will, as described by Dr. Lifton, was not a criterion for a diagnosis of post-traumatic stress disorder.

Q. Where under post-traumatic stress disorder does it say the breaking down of will is part of the criteria, that is what you told the Court?

A. I would include that under the death camps, concentration camps, prisoner of war.

• • •

Q. I'm asking you is that listed in the criteria?

A. The breaking down, specifically, no, it's not.

Dr. Stock, in a purely conclusory manner, thereafter summarized his rationale, after going full circle, by restating his scientifically unsupported thesis that although the "captivity syndrome" was anchored in forcible physical confinement and was not equatable to the living conditions experienced by Molitoris and Fulmer, and the facts of those living conditions would not support the diagnosis of "post-traumatic stress disorder," it was nevertheless his opinion that both Molitoris and Fulmer were "psychological hostages" who had no will to leave the defendants' farm and were therefore bound to "involuntary servitude":

Q. Doctor, the basis of your opinion, . . . you have assumed all of the facts as true, is that correct, that have been related to you?

A. Yes. It's my feelings if they were, if they were true, then, this is what occurred.

Q. And you have literally in your eleven points, if you just take number one, concluded, which is a conclusion, that captivity exists?

A. Yes, in the *psychological sense*.

(emphasis added).

It is true, as the majority opines, that "captivity syndrome" is well documented in psychological literature, however, recognition of "captivity syndrome" as a generally accepted theory within the particular field in which it belongs is not at issue. At issue is the correlation/equation or lack thereof between "captivity syndrome" and "psychologically induced involuntary servitude." It is this lack of correlation/equation between the two inconsistent theories that has been the thrust of defendants' argument before the trial court and here on appeal. It is the absence of *any* peer recognition, validation or acceptance of a correlation between the two theories in litera-

ture, research or otherwise that supports the defendants' assignments of error.

It is also true, as the majority asserts, that defendants challenged Stock's terminology of "involuntary conversion" however, the challenge transcends the isolated phrase. The defendants challenged the application of the term as a catalyst for Dr. Stock's unsupported assertions of "psychologically induced involuntary servitude" or a "psychological hostage" situation. It is the transition from a forceful *physical* confinement and systematic coercive environment calculated to induce "ideological conversion" which is the essential predicate for "captivity syndrome" to *psychologically* induced involuntory servitude in a environment free of forceful phyiscal confinement or psychological coercion that gives rise to the defendants' exceptions.

The majority would bridge the vital gap, although Dr. Stock was unable to do so, by characterizing "Dr. Stock's use of the term involuntary conversion as merely a description to convey the recognized effects of the captivity syndrome." However characterized, Dr. Stock's expressions to the jury, intended as ostensibly expert opinion predicated upon sufficiently established professional principles and as having gained general acceptance in the particular field in which it belonged, stand naked and ignored by his peers and finds support only in this initial airing of his own personally tailored theory.[9]

The majority again misconstrues the issues on appeal when it urges that since defendants elected to present two experts who contradicted Dr. Stock's analogy of the "captivity syndrome," it was for the jury to evaluate the weight of the evidence, citing to *Brown*. The weight of the evidence is not in question; the threshold issue is the admissibility of the

[9] This was the first time that he testified to his theories: "this is my first case of involuntary servitude."

evidence that must be initially addressed. *Brown*, 557 F.2d at 556, addressed the issue thusly:

> Conflicting testimony concerning the conclusions drawn by experts, *so long as they are based on a generally accepted and reliable scientific principle*, ordinarily go to the weight of the testimony rather than to its admissibility.

(emphasis added). The language presumes a competent expert witness and testimony which is based upon demonstrated reliable principles which have been sufficiently established to have gained general acceptance in the particular field to which it belongs.

In sum, this case represents a classical example of the manner in which expert testimony, admitted without proper foundation, can confuse or mislead the trier of fact and thereby defeat a defendant's right to a fair trial. Without doubt, Dr. Stock's opinion conveyed apparent objectivity as is evident from the jury's verdict. His obstensibly scientific theory carried undue weight with the trier of fact and precluded effective response beyond an ineffective general denial. Since Dr. Stock's theory had received no exposure among his peers, qualified persons had no opportunity to either validate Dr. Stock's results or criticize the means by which he reached his opinions. Thus, paraphrasing the admonition of *Brown*, 557 F.2d at 556, the courtroom in the present case was a research laboratory. The fate of the defendants in this criminal prosecution rested on their ability to successfully rebut scientific evidence which had an "aura of special reliability and trustworthiness", although in reality, Dr. Stock was testifying to an unproved hypothesis in an isolated experiment which had not gained general acceptance in its field.[10]

[10] It would appear that the majority now overrules the overwhelming legal precedent in this circuit and throughout the country that relieves a defendant from the burden of rebutting the "aura of special reliability and trustworthiness" of obstensible scientific evidence with this legally unsupported contradiction:

I would therefore reaffirm the sound pronouncements by this Circuit in *Green*, *Brown*, *Brady* and reverse the trial court on this issue and remand the case for a new trial.

The competency of Dr. Stock to testify as an expert witness was placed in issue by the government and the court as demonstrated by the following dialogue:

> Ms. Morgan [government counsel]: Your Honor, we would offer Dr. Stock as an expert in the field of Forensic Psychiatry and offer his expert testimony to the Jury.
>
> The COURT: I don't pass on qualifications, its up to the jury. Go ahead and interrogate him.

Initially it should be noted that Dr. Stock was offered "as an expert in the field of Forensic Psychiatry". Dt. Stock was neither a medical doctor nor was he qualified in the specialty of psychiatry, let alone in the field of forensic psychiatry. This alone should have made his competency suspect.

The trial court obviously abdicated its mandatory duty to pass upon the competency of a witness offered as an expert. The majority would dismiss this refusal to act by citing to defense counsel's failure to object. The reliance is misplaced.

The salient purpose for entering an objection during trial is to alert the trial court to an issue which demands its attention and to record for appellate review the courts disposition thereof. The record here has concisely preserved the

---

We believe, however, that any such prejudice in this case was greatly vitiated by the fact that the defendants presented two experts who contradicted Dr. Stock's application of the captivity syndrome to this case. Dr. Emanuel Tenay, a psychiatrist, testified, for example, that it was "really ridiculous to apply [the captivity syndrome] to this situation." Given this well-rounded presentation, the jury was perfectly capable of evaluating Dr. Stock's testimony and giving it its due weight. We therefore reject the defendants' argument that Dr. Stock's testimony was improperly admitted.

It is true that the defendants presented two experts to contradict Dr. Stock's testimony, however, they had no alternative after the court permitted him to testify.

issue for appropriate review. After the court disposed of the objection, counsel were thereafter obliged to abide by the ruling and to proceed with the trial of the action. *Maness* v. *Meyers*, 419 U.S. 449, 459, 95 S.Ct. 584, 591, 42 L.Ed.2d 574 (1975).

This court has construed Fed.R.Evid. 702 to permit the admission of expert testimony only when it is presented by (1) a qualified expert; (2) testifying on a proper subject; (3) in conformity to a generally accepted explanatory theory; (4) the probative value of which outweighs any prejudicial effect. *Green*, 548 F.2d at 1268. The appellants have also charged the trial court with error in permitting the government's expert to testify and to express opinions contrary to the first mandate of *Green*. *Green*, 548 F.2d at 1268, paraphrases Fed.R.Evid. 702 as follows:

> To permit expert testimony to be heard by the jury, *the trial court must first determine* whether the specialized knowledge involved "will assist the trier of fact to understand the [other] evidence or to determine a fact in issue." Then *it* must satisfy *itself* that the proffered *witness* is "qualified as an expert by knowledge, skill, experience, or education . . ." *Appellate review of such sensitive* discriminations by lower courts *may only be rationally accomplished on an ad hoc basis.*

(emphasis added).

The non-delegable duty is, as a matter of law, placed squarely upon the shoulders of the trial judge. Stated differently, competency of a witness to testify is for the judge to decide while credibility of the witness is left to the jury. *United States* v. *Barnard*, 490 F.2d 907, 912 (9th Cir. 1973); *cert. denied*, 416 U.S. 959 (1974). Expert testimony is admissible only when the witness is in fact an expert and is accepted as such by the court. *United States* v. *Amaral*, 488 F.2d 1148, 1153 (9th Cir. 1973). Meaningful implementation of this mandate by the trial court has historically afforded

the accused the protection against the prejudicial impact of opinion evidence clothed with the weight of expertise, which gave rise to the rule, and allayed the apprehensions voiced in *Amaral* and *Green* and echoed by their progeny. Abdication of the duty by the trial judge is plain error.

The majority recognizes, but seeks to avoid, the error charged by the defendants by stating that "with regard to the first criterion, the defendants do not argue that Dr. Stock was not a qualified expert; they simply argue that the district court failed to find that he was a qualified expert." I cannot agree with this conclusion. The argument presented in defendant's briefs and before this court belie that formulation. Defendants clearly contested both Dr. Stock's competency as an expert and the trial court's refusal to consider and pass upon that competency when the facts of his expertise demanded a court ruling. More specifically, defendant's challenged Dr. Stock's competency to extrapolate a "psychologically induced involuntary servitude" or a "psychological hostage" situation in an environment free of forceful physical confinement and/or systematic psychological coercion, from a forceful physical confinement and environment coupled with insidious coercive psychological treatment calculated to induce "ideological conversion" which is the preconceived predicate for "captivity syndrome" as discussed by Dr. Lifton. In sum, defendants objected to Dr. Stock's competency to formulate and testify to a thesis of first psychological/psychiatric impression which has its basis in an unproved hypothesis derived for an isolated purpose and which has no acceptance in the scientific field in which it belongs.

An examination of Dr. Stock's credentials[11] reflects academic

[11] The record discloses that Dr. Stock's academic credentials included a Bachelor of Arts degree in psychology from the University of Florida in Emotionally Disturbed Children; a Master of Science degree in Clinical Psychology from Emporia State University and a Doctorate in Psychology from the University of Kansas in Neurologically Impaired Children. Dr. Stock was a fully licensed psychologist in the state of Michigan. He was not board certified in any area or specialty. He participated in an internship at the Department of Psychiatry at Rutgers Medical School. He was an Adjunct Professor of Psychology at Trenton State College and in 1977 undertook employment at the Center for Forensic Psychiatry in Ypsilanti, Michigan. He listed no hospital privileges. He has lectured at the Special Operations Research Section of the FBI Academy at Quantico Virginia on International Terrorism and Hostage Negotiations; at the United States Secret Service Academy in Washington, D.C. on Interview Interrogation and Threat Analysis to the President. He was an instructor at the Jackson Community College Police Academy and the Criminal Justice Training Center in Ohio in the field of Hostage Taking and Hostage Negotiations. He has presented papers at the American Psychological Association in Washington, D.C. on the Technology of Terrorism and Psychological Consultation to Police Agencies. He wrote a paper for the Journal of Psychiatry on the subject of the Law on Competency to Stand Trial. Dr. Stock characterized his practice in the following terms:

> In my capacity as a psychologist I work with numerous individuals, children, and adolescents who are mentally retarded and in my work at the Forensic Center I have evaluated and treated individuals who were mentally retarded.

training in the diagnosis and treatment of disturbed children and neurologically impaired children. He had extensive experience in testing and evaluating children and adolescents who were mentally retarded. He was familiar with the literature in the field of psychiatry characterized as "victimization" which he defines as dealing with victims of rape and other violent crimes, terrorism including hostage taking and natural disasters. His knowledge of "captivity syndrome" resulted primarily from his reading of Dr. Lifton's book.

The defendants have not questioned Dr. Stock's competency to administer individual intelligence tests, personality assessment tests, conduct group testing and to interpret and evaluate individual mental retardation levels. Defendants have taken no exception to his opinions concerning the mental retardation levels of Molitoris or Fulmer. All of the foregoing practices and procedures were well within the area of his expertise and training. His experience and training in the area of testing, interpreting and evaluating the levels of retardation does not, however, qualify him as an expert in the unrelated field discussed in Dr. Lifton's book. Moreover,

absent any correlation in the record between "terrorism" including "hostage-taking" and Dr. Lifton's "captivity syndrome," Dr. Stock's experience in the area of "terrorism" lends no weight to his qualifications to advance a theory beyond his expertise which has received no recognition, validity or general acceptance in the field to which it belongs.[12]

In light of Dr. Stock's questionable credentials and his highly intricate and often confusing and contradictory testimony, the court, at the very least, had a duty to protect the defendants' right to a fair trial by exercising its mandatory duty to rule on Dr. Stock's competency as an expert witness. Abdication of this duty by the trial court constituted plain error. Accordingly, I would also reverse and remand on this issue.

In closing, I cannot refrain from observing that without Dr. Stock's highly prejudicial and inadmissible testimony, the government's case would, as a matter of law, fail for want of proof beyond a reasonable doubt that the defendants knowingly and wilfully conspired and did in fact hold Molitoris and Fulmer to involuntary servitude. For reasons stated herein, I would remand this case for retrial.

---

[12] The record does not demonstrate any interplay or inter-relationship between "hostage-taking" and Dr. Stock's "involuntary conversion" "psychological hostage" thesis. The conditions associated with "hostage-taking" were characterized as the "Stockholm Syndrome" by Dr. Stock. The record also fails to disclose any analogy between the eleven points of Dr. Lifton's "captivity syndrome" and the criteria that induces "Stockholm Syndrome."

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 84-1288

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

v.

IKE KOZMINSKI, MARGARETHE KOZMINSKI AND JOHN KOZMINSKI, DEFENDANTS-APPELLANTS.

[FILED APR. 16, 1987]

Before: LIVELY, Chief Judge; ENGEL, KEITH MERRITT, KENNEDY, MARTIN, JONES, CONTIE*, KRUPANSKY, WELLFORD, MILBURN, GUY and NELSON, Circuit Judges.

JUDGMENT

UPON CONSIDERATION of the petition for rehearing en banc and the supplemental briefs,

THIS CAUSE came on to be heard and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby reversed and the case is remanded for a new trial under the standards enunciated in this opinion.

ENTERED BY ORDER
OF THE COURT

John P. Hehman, Clerk

JOHN P. HEHMAN

Clerk

ISSUED AS MANDATE: May 8, 1987
COSTS: NONE

*Honorable Leroy J. Contie became Senior Circuit Judge July 1, 1986.

APPENDIX D

RELEVANT JURY INSTRUCTIONS

[Court:] In order to find a particular defendant guilty as charged in Counts II and III of the Indictment, the government must prove beyond a reasonable doubt each of the following elements as to Robert Fulmer for Count II and as to Louis Molitoris for Count III:

1. That a particular defendant held or aided and abetted in the holding of Robert Fulmer under Count II or Louis Molitoris under Count III to involuntary servitude for a term.

2. That the act or acts of the defendants were done knowingly or willfully.

If you find that the government has proved the above two elements as to a particular defendant and as to a particular count beyond a reasonable doubt, then your verdict will be guilty as to that count and that defendant.

If, however, you find that the government has failed to prove either or both of the elements set forth above as to a particular defendant and as to a particular count, then your verdict will be not guilty as to that defendant and that count.

As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every element essential to the crime charged; the law never imposes upon the defendant in a criminal case the burden or duty of calling any witnesses or of producing any evidence.

A person who willfully aids and abets another in the commission of an offense is punishable as a principal.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as in something he wishes to bring about; that is to say, that he willfully seeks by some act or omission to make the criminal venture succeed.

You, of course, may not find a defendant guilty as to a particular count unless you find beyond a reasonable doubt that every element of the particular offense as defined in these instructions was committed by some person or persons, and that that defendant participated in its commission.

The government is not required to prove that a defendant personally committed the offense charged. Rather, the government bears the burden of showing (1) that every element of a particular offense as defined in these instructions was committed by some person or persons and (2) that a defendant (a) was that person or one of those persons, or (b) aided and abetted that person or those persons in the commission of the offense.

Involuntary servitude consists of two terms.

Involuntary means "done contrary to or without choice"—"compulsory"—"not subject to control of the will".

Servitude means "A condition in which a person lacks liberty especially to determine one's course of action or way of life."—"slavery"—"the state of being subject to a master."

Involuntary servitude involves a condition of having some of the incidents of slavery.

It may include situations in which persons are forced to return to employment by law.

It may also include persons who are physically restrained by guards from leaving employment.

It may also include situations involving either physical and other coercion, or a combination thereof, used to detain persons in employment.

It may include situations in which the coercive acts or words cause persons in employment to believe they cannot freely leave employment if the acts are done or the words spoken with the intent to cause this result.

In other words, based on all the evidence it will be for you to determine if there was a means of compulsion used, sufficient in kind and degree, to subject a person having the same general station in life as the alleged victims to believe they had no reasonable means of escape and no choice except to remain in the service of the employer. In this respect you are instructed that you may find that not all persons are of like courage and firmness. You may consider the character and condition of life of the parties, the relative inferiority or inequality between the persons who perform the service and the persons exercising the force or influence to compel its performance and the defendants' knowledge of these matters.

The matter involves the knowledge and intent of the person charged as well as the character and understanding of the alleged victim.

It is not part of the Government's burden of proof, in order for you to return a verdict of guilty, to show that an alleged victim named in the Indictment made an attempt to escape. You may, however, consider any evidence of escape attempts as well as the opportunities to leave and the voluntary remaining or returning as bearing upon the voluntariness of the person's labor.

In determining whether the service was involuntary, you are instructed that it makes no difference whether or not the persons alleged to have been held in involuntary servitude initially agreed voluntarily to work. If a person desires to withdraw, and then is forced to remain and perform services against his will, his service is involuntary.

In the same sense, the failure to pay a person who voluntarily performs labor does not transform that labor into an "involuntary servitude".

Of course, an employer can use any legitimate means to retain the services of an empoyee [*sic*], such as offering the employee benefits, or seeking to convince the employee that he would be better off if he continued in his employment.

Payment of wages to the alleged victims or the conferring of other benefits on them is of course a proper means of attempting to retain their services. You should take evidence of such payment or benefits into account in your determination of whether or not the imporper [*sic*] conduct of a particular defendant, if you find such improper conduct to have occurred, was a necessary cause of the decision of one or both of the alleged victims to remain on the farm. However, the fact that the alleged victims were paid or were given other benefits does not necessarily mean that they were not held in involuntary servitude.

As I have instructed you, you must consider all of the factors that might have influenced the decision of both of the alleged victims to remain on the farm. The desire to receive wages and benefits may have been one such factor. However, you must still determine whether or not the improper conduct of a defendant, if any, was a necessary cause of the decision of one or both of the alleged victims to remain.

In order to find that a particular defendant is guilty of holding one or both of the alleged victims in involuntary servitude, in addition to the necessary coercion and intention on the part of the defendants, you must find that those means were an actual and necessary cause of the decision of one or both of the alleged victims to continue working for the Kozminskis. In other words, you must determine if one or both of the alleged victims would have left the employment if they had not been subjected to improper conduct on the part of that particular defendant.

In determining whether or not the improper means was a necessary cause of the decision of the alleged victim to continue working for the Kozminskis, you must evaluate all of the factors that might have affected that decision, including any legitimate means used by that defendant to convince the alleged victim to retain the employment. After considering all of the factors that might have affected

that decision, you must decide whether or not the decision of either or both of the alleged victims to remain on the farm would have been made if improper means had not been used by a particular defendant.

If you determine that either or both of the alleged victims would have continued to work for the Kozminskis regardless of the use of improper means by that particular defendant then you must find that the improper conduct of that defendant was not a necessary cause of the decision of both victims to retain their employment.

In making the determination involving involuntary servitude, you may consider all of the evidence in this case to determine if a particular defendant held or aided and abetted in the holding of either Louis Molitoris or Robert Arthur Fulmer to involuntary servitude.

I caution you again as I have before, however, the defendants are not on trial for failure to comply with minimum wage laws, or for violating certain social regulations or for assault or battery or for using bad language in a coercive way. Neither are they on trial for neglect, for misappropriation of money, or for breach of an employment contract. Your attention must be directed to the discrete charge outlined in these instructions.

You will note that Element One requires proof that the victim was held "for a term," that is, a period of time. In that respect, I instruct you that it is not necessary for the Government to prove any given specific term of an appreciable length of time. If the person was held for any term, regardless of how short such term may be, it would come within the "held for a term" provisions of the statute.

Element Two requires that the acts of the defendants were done knowingly and willfully.

An act, omission, or failure to act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The word "knowingly" is used to insure that no one will be convicted for an act done because of mistake, or accident, or other innocent reason.

An act, omission, or failure to act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

You will note that to act knowlingly [*sic*] requires that the act be done intentionally. The crimes charged requires proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the government must prove that the defendant knowingly did an act which the law forbids, or knowingly failed to do an act which the law requires, purposely intending to violate the law.

Such intent may be determined from all the facts and circumstances surrounding the case. Specific intent must be proved beyond a reasonable doubt before there can be a conviction.

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But, you may infer the defendant's intent from the surrounding circumstances.

You may consider any statement made by the defendant, and all other facts and circumstances in evidence which indicate the state of mind. You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

As I have said, it is entirely up to you to decide what facts to find from the evidence.

You will note that the Indictment charges that the offense was committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the

case establishes, beyond a reasonable doubt, that the offense was committed on a date reasonably near the date alleged.

That is the end of the instructions relating to Counts II and III of the Indictment.

* * * * *

APPENDIX E

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Thirteenth Amendment.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

18 U.S.C. 241. Conspiracy against rights of citizens.

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

18 U.S.C. 1584. Sale into involuntary servitude

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

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OPPOSITION

BRIEF

Supreme Court, U.S.
FILED
SEP 19 1987
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CLERK

No. 86-2000

In The

Supreme Court of the United States

October Term, 1987

UNITED STATES OF AMERICA,
Petitioner,

v.

IKE KOZMINSKI, ET AL,
Respondents.

BRIEF FOR RESPONDENTS
— IN OPPOSITION TO —
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

WHETHER 'INVOLUNTARY SERVITUDE' AS PROHIBITED AND MADE CRIMINAL BY THE THIRTEENTH AMENDMENT AND 18 U.S.C. 241 AND 1584, IS PRESENT ONLY WHERE A PERSON COMPELS ANOTHER TO REMAIN IN HIS SERVICE THROUGH PHYSICAL OR LEGAL COERCION OR, IF THE VICTIM IS A MINOR, AN IMMIGRANT, OR A MENTAL INCOMPETENT, THROUGH FRAUD AND DECEIT.

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UNITED STATES OF AMERICA,
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IKE KOZMINSKI, ET AL,
Respondents.

BRIEF FOR RESPONDENTS

STATEMENT

Respondents supplement the recitation of facts developed on trial appearing in petitioner's statement as follows:

The Court of Appeals stated that 'the government concedes that the men were "free to leave", "came back on their own accord" but "believed that they had no place else to go"' (App to Pet 3a). Further, '[t]he men often drove a tractor on the road. Several witnesses also testified that they had seen the men in town or in other locations away from the farm. On occasion they left the farm to visit family members or friends. They sometimes "sneaked away" from the farm. They "hid" with neighbors' (App to Pet 5a).

On trial, Fulmer testified that the only thing that respondents told him would happen to him if he left the farm (Tr IV 168) was 'if I did not stay that they would put me back at the training school again' (Tr IV 167); that he

liked it at the training school (Tr IV 135); and that he told a man at the sheriff's department when interviewed that he 'did not believe the threats [sending him back to the training school] that were made' and that he 'knew that they were a lie' (Tr V 38). He testified that they went into Chelsea one Sunday with Molitoris, that they talked to a police officer, and that he didn't tell the officer that he was being held against his will on the farm (Tr IV 180).

On trial, Molitoris testified that he met Ike Kozminski in the latter's barber shop in Ann Arbor, that Ike let him sleep in the barber shop (Tr V 84), that before that, he slept in cardboard boxes in winter by the river (Tr V 85), that he didn't have a job (Tr V 86). He agreed to come to the farm for a place to sleep, food, cigarettes, and he knew he had to work for them (Tr V 120). He left the farm three times (Tr V 73). He came to Ann Arbor and put an application 'up in the cemetery' (Tr V 74); one time he went to Chelsea and stayed with a good friend (Tr V 75). One time he went to Ann Arbor with Fulmer and ran into two police officers but he didn't tell the officers that he didn't want to stay on the farm (Tr V 98). The two men had to clean their own place; sometimes it was clean and sometimes it was dirty (Tr V 113); he didn't wash his clothes too well (Tr V 114); he took a shower every Sunday (Tr V 104). When Ike Kozminski told him that he had to stay on the farm the rest of his life, he didn't believe Ike (Tr V 123). He and Fulmer had over 25 cats living in the trailer and the barn (Tr V 131).

REASONS FOR DENYING THE WRIT

I

The Court has long adhered to the basic principle that the Court has power over judgments of lower courts and that the Court will not revise opinions of the lower courts. Cf *Herb* v *Pitcairn*, 324 US 117, 125-126 (1945); *Fay* v *Noia*, 372 US 391, 464 (1963).

The judgment of the Court of Appeals in the case at bench is that the respondents must be given a new trial (App to Pet 107a).

Petitioner has expressly stated that 'we do not challenge here the court of appeals' determination that a new trial is warranted' (Pet 9), and petitioner does not challenge the correctness and propriety of the Court of Appeals' determination that a new trial must be granted because 'certain government expert testimony was improperly admitted' (Pet 8).

Hence, even though the Court should grant the petition for certiorari and even though petitioner should persuade the Court to its argument concerning the definition of involuntary servitude expressed by the Court of Appeals, still the judgment of the Court of Appeals would stand and the respondents would be entitled to a new trial.

Hence, since petitioner disclaims any prejudice to it from the judgment of the Court of Appeals and complains only of 'the court of appeals' construction of involuntary servitude,' the petition for certiorari should be denied.

II

Petitioner complains that unless the Court grants certiorari, the Government 'will be precluded in the future from maintaining Section 1584 prosecutions in the Sixth Circuit that, like this case, depend on coercive

means outside of the Circuit's reading of the statute.' But, petitioner overlooks the fact that the Government is the prosecuting party in Section 1584 cases in the other 10 federal circuits and that inevitably defendants charged under Section 1584 will seek to have their juries instructed according to definitions of involuntary servitude laid down by the Court of Appeals for the Sixth Circuit, and this will result in either the Government or the defendant challenging the judgment in the case on the basis of the correctness *vel non* of the Sixth Circuit definition, which will directly lead in the discretion of this Court to a proper review of the question.

III

The word 'servitude' derives from the Latin word *servus* which means 'slave.' 'Servitude' is defined in one dictionary as 'The condition of being a slave or serf; absence of personal freedom.' *The Shorter Oxford English Dictionary on Historical Principles*, Clarendon Press, Oxford (3d Ed 1984), p 1951.

The phrase 'involuntary servitude' thus would seem to be a pleonasm. Its widespread use and acceptance, however, implies a recognition, however tacit, that it is the natural condition of man and woman to be in servitude to something or someone in various stages of life. Most of these servitudes are recognized as being 'voluntary,' however, in the sense that the person is a willing *servus*. And it is recognized that these servitudes are psychologically induced, be it the ineffable attraction of a loved one, the charisma of a spiritual leader, the compelling character of a political leader, the eternal verities of this doctrine or that.

The law of the land proscribes involuntary servitude induced and maintained, broadly speaking, by force or its equivalents. It did not intend to ensnare in its net of

proscription the 'voluntary' servitudes alluded to above. In its definition of involuntary servitude, the Court of Appeals was concerned not to throw the net of the statute so widely as 'to place the day-to-day activities of cult groups, communes and religious orders within the coverage of the statute' (App to Pet 14a) and still hold amenable to the law those who through the use or threatened use of state-imposed legal coercion or the use of fraud or deceit obtain or maintain services where the servant is a minor, an immigrant or one who is mentally incompetent under conditions where the servant believes that he or she has no viable alternative but to perform service for the master and where the master intended to hold the servant to involuntary servitude (App to Pet 12a).

The definition promulgated by the Court of Appeals effectuates the intent of the 13th Amendment to the United States Constitution and of 18 U.S.C. 1584 and establishes clear criteria of the conduct condemned. At the same time, it insures that neither the prosecutor nor the jury in wild flights of the imagination will condemn persons for conduct not intended to be punished. It will guard against precisely such vague and unanchored legal reasoning as is reflected in petitioner's statement that '[j]ust as involuntariness may be established in a variety of different ways in other more familiar legal contexts, ranging from contract and tort law to criminal procedure, so too may it be shown in establishing involuntary servitude' (Pet 12-13).

Since the judgment of the Court of Appeals that a new trial must be granted to respondents is not challenged and since the definition promulgated by the Court of Appeals of involuntary servitude is clear and sensibly consonant with the intent of Section 1584 and the 13th Amendment, there is no need for the Court to review the judgment of the Court of Appeals.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

By: /s/ CARL ZIEMBA
Attorney for Respondents
2000 Cadillac Tower
Detroit, Michigan 48226
(313) 962-0525

Dated: September 17, 1987

JOINT APPENDIX

SUPREME COURT, U.S.
FILED
DEC 17 1987
JOSEPH F. SPANIOL, JR.

No. 86-2000

In the Supreme Court of the United States

OCTOBER TERM, 1987

UNITED STATES OF AMERICA, PETITIONER

v.

IKE KOZMINSKI, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED JUNE 16, 1987
CERTIORARI GRANTED OCTOBER 13, 1987

In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 86-2000

UNITED STATES OF AMERICA, PETITIONER

v.

IKE KOZMINSKI, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 84-1288

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

IKE KOZMINSKI, ET AL., DEFENDANTS-APPELLANTS

RELEVANT DOCKET ENTRIES

Date		Filings – Proceedings
1984		
5/03	1)	Copy of notice of appeal filed; and cause docketed.
8/28	8)	Notice from court reporter that transcript was filed in district court on 8/23.
9/12		*Certified Record,* (1 vol. of pleadings, 23 vol. of trans).
9/12	9)	Letter sent requesting pre-argument statement by 9/24.
9/27		Brief (7) of appellant (m-9/25/84) (10/25/85 additional 15).
10/30		Brief (7) of appellee (m-10/29/84) (11/19/85 additional 15).
10/07		Joint Appendix (5) (m-11/5/84) (additional 15 10/25/85).
1985		
1/11		CAUSE ARGUED by Carl Ziemba for appellant, by Mildred M. Matesich for appellee (Before: Lively, Martin and Krupansky, JJ.)

Date		Filings – Proceedings	Filed
1985			
8/23	10)	JUDGMENT: affirmed (Lively, Martin and Krupansky, JJ.) (No Costs Taxed).	
8/23		OPINION, Martin J. (Krupansky, J. separate dissenting opinion).	
9/4	11)	PETITION FOR REHEARING EN-BANC filed by appellant (m-8/31).	
10/04	12)	ORDER: previous decision and judgment of this Court vacated; mandate is stayed and appeal is restored to docket as a pending appeal; parties to file supplemental briefs; appeal to be scheduled for oral argument as soon as practicable (Lively, Engel, Keith, Merritt, Kennedy, Martin, Jones, Contie, Krupansky, Wellford and Milburn, JJ.) en banc granted.	
10/04		Certified copy of above order sent to district court.	
10/15	13)	LETTER: to parties directing appellant to file 20 copies of a supplemental brief and 15 additional copies of the appellant brief by 11/8; appellee to file 20 copies of a supplemental brief and 15 additional copies of the appellee brief by 12/2.	
11/4		SUPPLEMENTAL BRIEF/APPELLANT: (15) (m-10/28).	
11/20		SUPPLEMENTAL BRIEF/APPELLEE: (20) (m-11/20).	
12/16		CAUSE ARGUED by Carl Ziemba for appellant, by Irv Gornstein for appellee	

Date		Filings – Proceedings	Filed
1985			
		(Before: Lively, Engel, Keith, Merritt, Kennedy, Martin, Jones, Contie, Krupansky, Wellford, Milburn, Guy, Nelson, JJ.).	
04/16	17)	JUDGMENT: reversed and remanded for a new trial (Lively, Engel, Keith, Merritt, Kennedy, Martin, Jones, Contie, Krupansky, Wellford, Milburn, Guy and Nelson, JJ.) F.P.	
04/16		OPINION: Merritt, J. (Kennedy, Wellford and Krupansky, JJ., concurring; Guy, J., dissenting with the concurrence of Lively, Martin and Jones, JJ.; Keith, J., dissenting).	
05/08	18)	MANDATE, issued (No costs taxed).	
06/26	19)	SUPREME COURT NOTICE: petition for cert. filed 6/15/87. (Sup. Ct. No. 26-2000).	
10/21	20)	SUPREME COURT ORDER: petition for cert. granted 10/13/87. SERVICE of certified copy of Sup. Ct. ruling to dist. ct.	

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN

No. CR-83-70025-01

UNITED STATES OF AMERICA, PLAINTIFF

v.

IKE KOZMINSKI, DEFENDANT

RELEVANT DOCKET ENTRIES

Date	NR	Proceedings
10/24/83	1	Magistrate complaint (MAGISTRATE CARLSON) (Dkt'd 11/02/83).
		Case assigned to MAGISTRATE CARLSON (Dkt'd 11/02/83).
10/25/83	2	Order filed (MOTION AND ORDER TO SEAL THE COMPLAINT) (MAGISTRATE CARLSON) (Dkt'd 11/02/83).
10/26/83	3	Order filed (MOTION AND ORDER TO UNSEAL THE COMPLAINT) (MAGISTRATE CARLSON) (Dkt'd 11/02/83).
11/17/83		Case assigned to JUDGE JOINER (Dkt'd 11/17/83). US Attorney MORGAN, VIRGINIA M added to case (Dkt'd 11/17/83).
	13	Indictment (Dkt'd 11/28/83).
		Arraignment held (Counts 1-3) (Magistrate Hooe) (Dkt'd 11/28/83).
		Defendant enters plea of not guilty (Counts 1-3) (Magistrate Hooe) (Dkt'd 11/28/83).

Date	NR	Proceedings
01/23/84	41	Filed jury instructions (GOVT'S REQUESTED JURY INSTRUCTIONS, WITH CS.) (Dkt'd 01/26/84).
	42	–GOVT'S TRIAL BRIEF (Dkt'd 01/26/84).
01/25/84	44	Filed jury instructions (REQUESTED INSTRUCTION NO. 1) (Dkt'd 01/26/84).
	45	Minute sheet filed (VOIR DIRE BEGINS, JURY IMPANELED, JURY TRIAL BEGINS, JURY TRIAL HELD, JURY TRIAL CONTINUED TO 1/26/84) (JUDGE JOINER) (Dkt'd 01/26/84).
		Voir dire begins-jury (Counts 1-3) (JUDGE JOINER) (Dkt'd 01/26/84).
		Jury impaneled (Counts 1-3) (JUDGE JOINER) (Dkt'd 01/26/84).
		Trial begins-jury (Counts 1-3) (JUDGE JOINER) (Dkt'd 01/26/84).
02/09/84		Trial held-jury (Counts 1-3) (JURY CHARGED. JURY DELIBERATES) (JUDGE JOINER) (Dkt'd 02/13/84).
02/10/84		Minute sheet filed (JURY CONTINUES DELIBERATIONS. LUNCH SERVED. JURY RETURNS VERDICT. DEFTS' IKE & MARGARETH KOZMINSKI GUILTY TO ALL 3 CTS & DFT JOHN KOZMINSKI GUILTY ON CT 1 & NOT GUILTY TO CTS 2 & 3). (JUDGE JOINER) (Dkt'd 02/13/84).
		Jury verdict of guilty (Counts 1-3) (JUDGE JOINER) (Dkt'd 02/13/84).
		Sentencing set for 04/11/84 at 2:30 a.m. (Counts 1-3) (JUDGE JOINER) (Dkt'd 02/13/84).

Date	NR	Proceedings
	52	Filed jury instructions (INSTRUCTIONS GIVEN TO JURY 2/9/84) (JUDGE JOINER) (Dkt'd 02/13/84).
	53	–FORMS OF VERDICT (Dkt'd 02/13/84).
02/15/84	54	Order filed (STIP & ORDER EXTENDING TIME IN WHICH TO FILE MOTION FOR NEW TRIAL, MOTION FOR JUDGMENT OF ACQUITTAL AND MOTION FOR ARREST OF JUDGMENT TO 2/24/84 FOR DFT IKE KOZMINSKI.) (JUDGE JOINER) (Dkt'd 02/29/84).
02/21/84	59	Motion for new trial filed (MOT #9) (Counts 1-3) (MOTION BY DFT IKE KOZMINSKI FOR NEW TRIAL, FOR JUDGMENT OF ACQUITTAL, OR FOR ARREST OF JUDGMENT, BA & PS. HEARING SET FOR 4/3/84 @ 2:00.) (Dkt'd 02/29/84).
		Motion for new trial hearing set for 04/03/84 @ 2:00 a.m. (MOT #9) (Dkt'd 02/29/84).
02/27/84	62	–(MOT #9) (SUPPLEMENTAL BRIEFS IN SUPPORT OF MOTION FOR NEW TRIAL AND MOTION IN ARREST OF JUDGMENT) (Dkt'd 02/29/84).
	63	–ps for serving supplemental briefs in support of motion for new trial and motion in arrest of judgment (Dkt'd 03/02/84).

Date	NR	Proceedings
03/05/84	66	Filed answer to motion for new trial (MOT #9) (GOVT'S SUPPLEMENTAL RESPONSE TO DFT IKE KOZMINSKI'S MOTION FOR ARREST OF JUDGMENT, WITH CS.) (Dkt'd 03/12/84).
03/07/84	68	Filed answer to motion for new trial (MOT #9) (GOVT'S RESPONSE TO DFT IKE KOZMINSKI'S MOTION FOR NEW TRIAL, FOR JUDGMENT OF ACQUITTAL OR FOR ARREST OF JUDGMENT, WITH BA & CS.) (Dkt'd 03/12/84).
03/27/84		Minute sheet filed (motion hrg for acquittal and/or for new trial held, motion denied) (JUDGE JOINER) (Dkt'd 03/28/84).
		Motion for new trial hearing held (MOT #9) (JUDGE JOINER) (Dkt'd 03/28/84).
		Motion for new trial denied (MOT #9) (JUDGE JOINER) (Dkt'd 03/28/84).
04/11/84	92	Motion for bail pending appeal filed (MOT #11) (JUDGE JOINER) (Dkt'd 04/17/84).
		Minute sheet filed (DFT SENTENCED–BOND EXONERATED. IVAN BARRIS WITHDRAWS AS COUNSEL OF RECORD AND CARL ZIEMBA ENTERS AS COUNSEL FOR APPEAL) (JUDGE JOINER) (Dkt'd 04/17/84).

Date	NR	Proceedings
		Bond exonerated (PER SENTENCING BLOTTER) (JUDGE JOINER) (Dkt'd 04/17/84).
		Sentencing of defendant (Counts 1-3) (IMPRISONMENT OF 10 YRS ON CT 1, 5 YRS ON CT 2 & 5 YRS ON CT 3. IMPR IS SUSPENDED & DFT PLACED ON PROBATION FOR 2 YRS on CT 1, 2 YRS ON CT 2, & 2 YRS ON CT 3. THE PD OF PROB ON CTS 2 & 3 ARE TO RUN CONCURRENT WITH THE PROB IMPOSED ON CT 1. PURSUANT TO PUBLIC LAW 97-291, THE COURT FINDS THE LOSS SUSTAINED BY VICTIMS FULMER & MOLITORIS TO BE $6,190.80 EACH. RESTITUTION IS ORDERED IN THE AMT OF $6,190.80 TO FULMER & $6,190.80 TO MOLITORIS. SAID RESTITUTION WILL BE PD JOINTLY BY DFT IKE KOZMINSKI, MARGARETH KOZMINSKI & JOHN KOZMINSKI. THE RESTITUTION IS TO BE PLACED IN AN INTEREST BEARING ESCROW ACCOUNT FORTHWITH AFTER AN ORDER HAS BEEN SUBMITTED BY THE PARTIES INDICATING THE MEANS BY WHICH THIS WILL BE DONE AND SAID ORDER WILL BE CONSIDERED INCORPORATED WITHIN THIS JUDGMENT. AS A SPECIAL CONDITION OF PROB, A FINE OF $10,000.00 IS IMPOSED ON CT 1, A FINE OF $5,000.00 IS IM-

Date	NR	Proceedings
		POSED ON CT 2 & A FINE OF $5,000.00 ON CT 3. THE FINES SHALL BE PD W/IN A PD OF 6 MOS. FINES ARE STAYED PENDING APPEAL. DFT'S BOND IS EXONERATED.) (Dkt'd 04/27/84).
04/12/84	95	Motion for bail pending appeal granted in part: denied in part (MOT #11) (ORDER PARTIALLY STAYING JUDGMENT PENDING APPEAL, FINE IS STAYED AND PROBATION AND CONDITIONS ARE NOT STAYED.) (JUDGE JOINER) (Dkt'd 04/27/84).
04/13/84	96	Order filed (order designating escrow agent) (CHIEF JUDGE PRATT) (Dkt'd 04/27/84).
		Attorney Appearance of ZIEMBA, CARL as a attorney for defendant (Dkt'd 04/27/84).
		Attorney ZIEMBA, CARL added to case (Dkt'd 04/27/84).
		Attorney BARRIS, IVAN E deleted from case (Dkt'd 04/27/84).
	97	Filed notice of appeal (Counts 1-3) (APPL #1) (appeal by Ike, Margareth & John Kozminski from the judgments of sentence imposed on 4/11/84) (Dk't 04/27/84).
04/19/84	99	Issued judgment and commitment to U.S. Marshal (Counts 1-3) (JUDGE JOINER) (Dkt'd 04/27/84).
05/11/84	105	—(APPL #1) (ACK FROM CCA FOR RECEIVING NOTICE OF APPEAL ON 5/3/84) (Dkt'd 05/16/84).

Date	NR	Proceedings
		U.S. Court of Appeals docket number (84-1288) (Dkt'd 05/16/84).
09/06/84	121	Certified and transmitted record on appeal to United States Court of Appeals (APPL #1) (1 volume of pldgs & 23 volumes of transcripts mailed by certified mail to CCA) (Dkt'd 09/11/84).
09/13/84	122	–RETURN RECEIPT FOR CERTIFIED MAILING OF FILE TO CCA RECEIVED AT CCA ON 9/11/84 (Dkt'd 09/14/84).
09/17/84	123	–(APPL #1) (ACK FROM CCA FOR RECEIVING DESIGNATED FILE ON 9/12/84) (Dkt'd 09/26/84).
09/05/85	126	Opinion of U.S. Court of Appeals (SLIP OPINION AFFIRMING THE JUDGMENT OF THE DISTRICT COURT.) (Dkt'd 10/10/85).
10/07/85	127	Certified copy of order from U.S. Court of Appeals dated 10/04/85 (ORDER THAT THE JUDGES HAVE VOTED FOR REHEARING OF THIS CASE EN BANC. THE EFFECT OF THE GRANTING OF A HEARING EN BANC SHALL BE TO VACATE THE PREVIOUS OPINION AND JUDGMENT OF THIS COURT, TO STAY THE MANDATE AND TO RESTORE THE CASE ON THE DOCKET AS A PENDING APPEAL. IT IS ORDERED THAT THE PREVIOUS DECISION AND JUDGMENT OF THIS COURT IS VACATED. THE MANDATE IS STAYED AND THIS CASE IS RESTORED TO THE DOCKET AS A

Date	NR	Proceedings
		PENDING APPEAL. THE CLERK WILL DIRECT THE PARTIES TO FILE SUPPLEMENTAL BRIEFS AND WILL SCHEDULE THIS CASE FOR ORAL ARGUMENT KLAS SOON AS PRACTICABLE.) (Dkt'd 11/06/85).
04/20/87	128	–(APPL #1) (COPY OF SLIP OPINION FROM CCA REMANDING CASE TO DISTRICT COURT FOR NEW TRIAL) (Dkt'd 04/22/87).
05/11/87	129	–(APPL #1) (SLIP OPINION OF ORDER OF CCA REMANDING THE CASE FOR A NEW TRIAL) (Dkt'd 05/19/87).
	130	Issuance of mandate of US Court of Appeals (APPL #1) on 05/11/87, cause remanded for retrial (Count) (CASE REMANDED FOR NEW TRIAL) (Dkt'd 05/20/87).

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN

No. CR-83-70025-02

UNITED STATES OF AMERICA, PLAINTIFF

v.

MARGARETHE KOZMINSKI, DEFENDANT

RELEVANT DOCKET ENTRIES

Date	NR	Proceedings
10/24/83	1	Magistrate complaint (MAGISTRATE CARLSON) (Dkt'd 11/02/83).
		Case assigned to MAGISTRATE CARLSON (Dkt'd 11/02/83).
10/25/83	2	Order filed (MOTION AND ORDER TO SEAL THE COMPLAINT) (MAGISTRATE CARLSON) (Dkt'd 11/02/83).
10/26/83	3	Order filed (MOTION AND ORDER TO UNSEAL THE COMPLAINT) (MAGISTRATE CARLSON) (Dkt'd 11/02/83).
11/17/83	13	Case assigned to JUDGE JOINER (Dkt'd 11/17/83).
		US Attorney MORGAN, VIRGINIA M added to case (Dkt'd 11/17/83).
		Indictment (Dkt'd 11/22/83). Arraignment held (Counts 1-3) (Magistrate Hooe) (Dkt'd 11/28/83).
		Defendant enters plea of not guilty (Counts 1-3) (Magistrate Hooe) (Dkt'd 11/28/83).

Date	NR	Proceedings
01/25/84	46	Filed jury instructions (DFT MARGARETH KOZMINSKI'S REQUESTED INSTRUCTIONS NO. 1,2,3 & 4) (Dkt'd 01/26/84).
		Minute sheet filed (VOIR DIRE BEGINS, JURY IMPANELED, JURY TRIAL BEGINS, JURY TRIAL HELD, JURY TRIAL CONTINUED TO 1/26/84) (JUDGE JOINER) (Dkt'd 01/26/84).
		Voir dire begins-jury (Counts 1-3) (JUDGE JOINER) (Dkt'd 01/26/84).
		Jury impaneled (Counts 1-3) (JUDGE JOINER) (Dkt'd 01/26/84).
		Trial begins-jury (Counts 1-3) (JUDGE JOINER) (Dkt'd 01/26/84).
02/09/84		Trial held-jury (Counts 1-3) (JURY CHARGED. JURY DELIBERATES) (JUDGE JOINER) (Dkt'd 02/13/84).
02/10/84		Minute sheet filed (JURY CONTINUES DELIBERATIONS. LUNCH SERVED. JURY RETURNS VERDICT. DEFTS' IKE & MARGARETH KOZMINSKI GUILTY TO ALL 3 CTS & DFT JOHN KOZMINSKI GUILTY ON CT 1 & NOT GUILTY TO CTS 2 & 3.) (JUDGE JOINER) (Dkt'd 02/13/84).
		Jury verdict of guilty (Counts 1-3) (JUDGE JOINER) (Dkt'd 02/13/84).
		Sentencing set for 04/11/84 @ 2:30 a.m. (Counts 1-3) (JUDGE JOINER) (Dkt'd 02/13/84).

Date	NR	Proceedings
	52	Filed jury instructions (INSTRUCTIONS GIVEN TO JURY 2/9/84) (JUDGE JOINER) (Dkt'd 02/13/84).
	53	–FORMS OF VERDICT (Dkt'd 02/13/84).
02/17/84	55	Motion for judgment of acquittal filed (MOT #6) (Counts 1-3) (MOTION BY DFT MARGARETH KOZMINSKI FOR JUDGMENT OF ACQUITTAL, WITH MEMO IN SUPPORT) (Dkt'd 02/29/84).
	56	Motion for new trial filed (MOT #7) (Counts 1-3) (MOTION BY DFT MARGARETH KOZMINSKI FOR NEW TRIAL, WITH MEMO IN SUPPORT.) (Dkt'd 02/29/84).
03/07/84	69	Filed answer to motion for new trial (MOT #7) (GOVT'S RESPONSE TO MARGARETH KOZMINSKI'S MOTION FOR NEW TRIAL, WITH BA.) (Dkt'd 03/12/84).
	70	Filed answer to motion for judgment of acquittal (MOT #6) (GOVT'S RESPONSE TO MARGARETH KOZMINSKI'S MOTION FOR JUDGMENT OF ACQUITTAL, WITH BA.) (Dkt'd 03/12/84).
03/27/84		Minute sheet filed (motion for acquittal and/or for new trial held, motion denied) (JUDGE JOINER) (Dkt'd 03/28/84).
		Motion for judgment of acquittal hearing held (MOT #6) (JUDGE JOINER) (Dkt'd 03/28/84).

Date	NR	Proceedings
		Motion for new trial hearing held (MOT #7) (JUDGE JOINER) (Dkt'd 03/28/84).
		Motion for judgment of acquittal denied (MOT #6) (JUDGE JOINER) (Dkt'd 03/28/84).
		Motion for new trial denied (MOT #7) (JUDGE JOINER) (Dkt'd 03/28/84).
04/11/84	93	Motion for bail pending appeal filed (MOT #12) (Dkt'd 04/17/84).
		Minute sheet filed (DFT SENTENCED–BOND EXONERATED. DAVID GOLDSTEIN WITHDRAWS AS COUNSEL OF RECORD AND CARL ZIEMBA ENTERS AS COUNSEL FOR APPEAL) (JUDGE JOINER) (Dkt'd 04/17/84).
		Bond exonerated (PER SENTENCING BLOTTER) (JUDGE JOINER) (Dkt'd 04/17/84).
		Sentencing of defendant (Counts 1-3) (IMPRISONMENT OF 10 YRS ON CT 1, 5 YRS ON CT 2 & 5 YRS ON CT 3. IMPR IS SUSPENDED & DFT PLACED ON PROBATION FOR PD OF 2 YRS on CT 1, 2 YRS ON CT 2 & 2 YRS ON CT 3. THE PD OF PROB ON CT 2 & CT 3 ARE TO RUN CONCURRENT WITH THE PROB IMPOSED ON CT 1. PURSUANT TO PUBLIC LAW 97-291, THE COURT FINDS THE LOSS SUSTAINED BY THE VICTIMS FULMER & MOLITORIS TO BE $6,190.80.

Date	NR	Proceedings
		RESTITUTION IS HEREBY ORDERED IN THE AMT OF $6,190.80 TO FULMER & $6,190.80 TO MOLITORIS. SAID RESTITUTION SHALL BE PD JOINTLY BY MARGARETH KOZMINSKI, IKE KOZMINSKI, AND JOHN KOZMINSKI. SAID RESTITUTION IS TO BE PLACED IN AN INTEREST BEARING ESCROW ACCOUNT FORTHWITH AFTER AN ORDER HAS BEEN SUBMITTED BY THE PARTIES INDICATING THE MEANS BY WHICH THIS WILL BE DONE AND SAID ORDER WILL BE CONSIDERED INCORPORATED W/IN THIS JUDGMENT. DFT'S BOND IS HEREBY EXONERATED.) (Dkt'd 04/27/84).
04/12/84	95	Motion for bail pending appeal granted in part: denied in part (MOT #12) (order partially staying judgment pending appeal, probation and conditions are not stayed.) (JUDGE JOINER) (Dkt'd 04/27/84).
04/13/84	96	Appearance of ZIEMBA, CARL as attorney for defendant (Dkt'd 04/27/84).
		Attorney ZIEMBA, CARL added to case (Dkt'd 04/27/84).
		Attorney GOLDSTEIN, DAVID I deleted from case (Dkt'd 04/27/84).
	97	Filed notice of appeal (Counts 1-3) (APPL #1) (appeal by Ike, Margareth & John Kozminski from the judgments of

Date	NR	Proceedings
		sentence imposed on 4/11/84) (Dkt'd 04/27/84).
04/19/84	100	Issued judgment and commitment to U.S. Marshal (Counts 1-3) (JUDGE JOINER) (Dkt'd 04/27/84).
05/11/84	105	–(APPL #1) (ACK FROM CCA FOR RECEIVING NOTICE OF APPEAL ON 5/3/84) (Dkt'd 05/16/84).
		U.S. Court of Appeals docket number (84-1288) (Dkt'd 05/16/84).
	115	Filed transcript of proceedings for 02/05/84. (JUDGE JOINER) (Dkt'd 08/24/84).
09/06/84	121	Certified and transmitted record on appeal to United States Court of Appeals (APPL #1) (1 volume of pldgs & 23 volumes of transcripts mailed by certified mail to CCA) (Dkt'd 09/11/84).
09/13/84	122	–RETURN RECEIPT FOR CERTIFIED MAILING OF FILE TO CCA RECEIVED AT CCA ON 9/11/84 (Dkt'd 09/14/84).
09/17/84	123	–(APPL #1) (ACK FROM CCA FOR RECEIVING DESIGNATED FILE ON 9/12/84) (Dkt'd 09/26/84).
09/05/85	126	Opinion of U.S. Court of Appeals (SLIP OPINION AFFIRMING THE DECISION OF THE DISTRICT COURT.) (Dkt'd 10/10/85).
10/07/85	127	Certified copy of order from U.S. Court of Appeals dated 10/04/85 (ORDER THAT THE JUDGES HAVE VOTED FOR REHEARING

Date	NR	Proceedings
		OF THIS CASE EN BANC. THE EFFECT OF THE GRANTING OF A HEARING EN BANC SHALL BE TO VACATE THE PREVIOUS OPINION AND JUDGMENT OF THIS COURT, TO STAY THE MANDATE AND TO RESTORE THE CASE ON THE DOCKET AS A PENDING APPEAL. IT IS ORDERED THAT THE PREVIOUS DECISION AND JUDGMENT OF THIS COURT IS VACATED, THE MANDATE IS STAYED AND THIS CASE IS RESTORED TO THE DOCKET AS A PENDING APPEAL. THE CLERK WILL DIRECT THE PARTIES TO FILE SUPPLEMENTAL BRIEFS AND WILL SCHEDULE THIS CASE FOR ORAL ARGUMENT KLAS SOON AS PRACTICABLE.) (Dkt'd 11/06/85).
04/20/87	128	–(APPL #1) (COPY OF SLIP OPINION FROM CCA REMANDING CASE TO DISTRICT COURT FOR NEW TRIAL) (Dkt'd 04/22/87).
05/11/87	129	–(APPL #1) (SLIP OPINION OF ORDER OF CCA REMANDING THE CASE FOR A NEW TRIAL) (Dkt'd 05/19/87).
	130	Issuance of mandate of US Court of Appeals (APPL #1) on 05/11/87, cause remanded for retrial (Count) (CASE REMANDED FOR NEW TRIAL) (Dkt'd 05/21/87).

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN

No. CR-83-70025-03

UNITED STATES OF AMERICA, PLAINTIFF

v.

JOHN KOZMINSKI, DEFENDANT

RELEVANT DOCKET ENTRIES

Date	NR	Proceedings
10/24/83	1	Magistrate complaint (MAGISTRATE CARLSON) (Dkt'd 11/02/83).
		Case assigned to MAGISTRATE CARLSON (Dkt'd 11/02/83).
10/25/83	2	Order filed (MOTION AND ORDER TO SEAL THE COMPLAINT) (MAGISTRATE CARLSON) (Dkt'd 11/02/83).
10/26/83	3	Order filed (MOTION AND ORDER TO UNSEAL THE COMPLAINT) (MAGISTRATE CARLSON) (Dkt'd 11/02/83).
11/17/83		Case assigned to JUDGE JOINER (Dkt'd 11/17/83).
		US Attorney MORGAN, VIRGINIA M added to case (Dkt'd 11/17/83).
		Indictment (Dkt'd 11/17/83).
		Minute sheet filed (dft John Kozminski's fst apr., Atty. Thomas Stringer present, arr. held, dft plead not guilty, order bond reinstated, pretrial

Date	NR	Proceedings
		conference set for 12/1/83 at 9:00. Travel restricted to E.D. of MI, close supervision by PSA.) (Magistrate Hooe) (Dkt'd 11/28/83).
		Arraignment held (Counts 1-3) (Magistrate Hooe) (Dkt'd 11/28/83).
		Defendant enters plea of not guilty (Counts 1-3) (Magistrate Hooe) (Dkt'd 11/28/83).
01/23/84	40	Government's requested voir dire (Dkt'd 01/26/84).
	41	Filed jury instructions (Govt's requested jury instructions with CS.) (Dkt'd 01/26/84).
	42	–GOVT'S TRIAL BRIEF (Dkt'd 01/26/84).
01/25/84	43	Filed jury instructions (Dkt'd 01/26/84).
		Minute sheet filed (VOIR DIRE BEGINS, JURY IMPANELED, JURY TRIAL BEGINS, JURY TRIAL HELD, JURY TRIAL CONTINUED TO 1/26/84) (JUDGE JOINER) (Dkt'd 01/26/84).
		Voir dire begins-jury (Counts 1-3) (JUDGE JOINER) (Dkt'd 01/26/84).
		Jury impaneled (Counts 1-3) (JUDGE JOINER) (Dkt'd 01/26/84).
		Trial begins-jury (Counts 1-3) (JUDGE JOINER) (Dkt'd 01/26/84).
02/09/84		Trial held-jury (Count 1-3) (JURY CHARGED. JURY DELIBERATES) (JUDGE JOINER) (Dkt'd 02/13/84).

Date	NR	Proceedings
02/10/84		Minute sheet filed (JURY CONTINUES DELIBERATIONS. LUNCH SERVED. JURY RETURNS VERDICT. DEFTS' IKE & MARGARETH KOZMINSKI GUILTY TO ALL 3 CTS & DFT JOHN KOZMINSKI GUILTY ON CT 1 & NOT GUILTY TO CTS 2 & 3.) (JUDGE JOINER) (Dkt'd 02/13/84). Jury verdict of guilty (Count 1) (JUDGE JOINER) (Dkt'd 02/13/84).
		Jury verdict of not guilty (Counts 2-3) (JUDGE JOINER) (Dkt'd 02/13/84).
		Sentencing set for 04/11/84 @ 2:30 a.m. (Count 1) (JUDGE JOINER) (Dkt'd 02/13/84).
	52	Filed jury instructions (INSTRUCTIONS GIVEN TO JURY 2/9/84) (JUDGE JOINER) (Dkt'd 02/13/84).
	53	–FORMS OF VERDICT (Dkt'd 02/13/84).
02/17/84	72	Filed answer to motion for judgment of acquittal (MOT #8) (GOVT'S RESPONSE TO JOHN KOZMINSKI'S MOTION FOR JUDGMENT OF ACQUITTAL OR IN THE ALTERNATIVE FOR NEW TRIAL, WITH BA & CS) (Dkt'd 03/12/84).
03/15/84		Motion for judgment of acquittal taken under advisement (MOT #8) (JUDGE JOINER) (Dkt'd 03/16/84).
03/21/84	88	Notice filed (NOTICE OF HEARING OF ALL MOTIONS FILED ON BEHALF OF IKE, MARGARETH & JOHN KOZMINSKI SET FOR 3/27/84 AT 4:30, WITH PS.) (Dkt'd 03/26/84).

Date	NR	Proceedings
03/23/84	89	Filed answer to motion for judgment of acquittal (MOT #8) (GOV'T SUPPLEMENTAL BRIEF IN RESPONSE TO DFT JOHN KOZMINSKI'S MOTION FOR JUDGMENT OF ACQUITTAL OR NEW TRIAL) (Dkt'd 03/26/84).
03/27/84		Minute sheet filed (motion for acquittal and/or new trial which was taken under advisement on 3/13/84 held & denied) (JUDGE JOINER) (Dkt'd 03/28/84).
		Motion for judgment of acquittal hearing held (MOT #8) (JUDGE JOINER) (Dkt'd 03/28/84).
		Motion for judgment of acquittal denied (MOT #8) (JUDGE JOINER) (Dkt'd 03/28/84).
04/11/84	94	Motion for bail pending appeal filed (MOT #13) (Dkt'd 04/17/84).
		Minute sheet filed (DFT SENTENCED–BOND EXONERATED. THOMAS STRINGER WITHDRAWS AS COUNSEL OF RECORD AND CARL ZIEMBA ENTERS AS COUNSEL FOR APPEAL) (JUDGE JOINER) (Dkt'd 04/17/84).
		Bond exonerated (PER SENTENCING BLOTTER) (JUDGE JOINER) (Dkt'd 04/17/84).
		Sentencing of defendant (Count 1) (IMPRISONMENT OF 10 YRS. THE EXECUTION OF IMPR IS SUSPENDED & DFT PLACED ON PROBATION FOR A PD OF 2 YRS. AS A

Date	NR	Proceedings
		SPECIAL CONDITION OF PROB THE DFT IS DIRECTED TO PARTICIPATE IN A DRUG ABUSE PROGRAM AND MENTAL HEALTH COUNSELING IF DEEMED NECESSARY BY THE PROB DEPT UNDER THE DIRECTION OF THE PROB DEPT. PURSUANT TO PUBLIC LAW 97-291, THE COURT FINDS THE LOSS SUSTAINED BY THE VICTIMS FULMER & MOLITORIS TO BE $6,190.80 EACH. RESTITUTION IS HEREBY ORDERED IN THE AMT OF $6,190.80 TO FULMER & $6,190.80 TO MOLITORIS. SAID RESTITUTION SHALL BE PD JOINTLY BY DFTS JOHN KOZMINSKI, IKE KOZMINSKI & MARGARETH KOZMINSKI. THE RESTITUTION IS TO BE PLACED IN AN INTEREST BEARING ESCROW ACCOUNT FORTHWITH AFTER AN ORDER HAS BEEN SUBMITTED BY THE PARTIES INDICATING THE MEANS BY WHICH THIS WILL BE DONE AND SAID ORDER WILL BE CONSIDERED INCORPORATED W/IN THIS JUDGMENT. DFT'S BOND IS HEREBY EXONERATED.) (Dkt'd 04/27/84).
04/12/84	95	Motion for bail pending appeal granted in part: denied in part (MOT #13) (order partially staying judgment pending appeal, fine is stayed and probation and conditions are not stayed.) (JUDGE JOINER) (Dkt'd 04/29/84).

Date	NR	Proceedings
04/13/84	96	Order filed (order designating escrow agent) (CHIEF JUDGE PRATT) (Dkt'd 04/27/84).
		Appearance of ZIEMBA, CARL as attorney for defendant (Dkt'd 04/27/84).
		Attorney ZIEMBA, CARL added to case (Dkt'd 04/27/84).
		Attorney STRINGER, THOMAS L deleted from case (Dkt'd 04/27/84).
	97	Filed notice of appeal (Count 1) (APPL #2) (appeal by Ike, Margareth & John Kozminski from the judgments of sentence imposed on 4/11/84). (Dkt'd 04/27/84).
04/19/84	101	Issued judgment and commitment to U.S. Marshal (Count 1) (JUDGE JOINER) (Dkt'd 04/27/84).
05/11/84		-(APPL #2) (ACK FROM CCA FOR RECEIVING NOTICE OF APPEAL ON 5/3/84) (Dkt'd 05/16/84).
		U.S. Court of Appeals docket number (84-1288) (Dkt'd 05/16/84).
09/06/84	121	Certified and transmitted record on appeal to United States Court of Appeals (APPL #2) (1 volume of pldgs & 23 volumes of transcripts mailed by certified mail to CCA) (Dkt'd 09/11/84).
09/13/84	122	-RETURN RECEIPT FOR CERTIFIED MAILING OF FILE TO CCA RECEIVED AT CCA ON 9/11/84 (Dkt'd 09/14/84).
09/17/84		-(APPL #2) (ACK FROM CCA FOR RECEIVING DESIGNATED FILE ON 9/12/84) (Dkt'd 09/26/84).

Date	NR	Proceedings
09/05/85	126	Opinion of U.S. Court of Appeals (SLIP OPINION AFFIRMING THE DECISION OF THE DISTRICT COURT.) (Dkt'd 10/10/85).
10/07/85	127	Certified copy of order from U.S. Court of Appeals dated 10/04/85 (ORDER THAT THE JUDGES OF THIS COURT HAVE VOTED FOR REHEARING OF THIS CASE EN BANC. THE EFFECT OF THE GRANTING OF A HEARING EN BANC WILL BE TO VACATE THE PREVIOUS OPINION AND JUDGMENT OF THIS COURT, TO STAY THE MANDATE AND TO RESTORE THE CASE ON THE DOCKET AS A PENDING APPEAL. IT IS ORDERED THAT THE PREVIOUS DECISION AND JUDGMENT OF THIS COURT IS VACATED, THE MANDATE IS STAYED AND THIS CASE IS RESTORED TO THE DOCKET AS A PENDING APPEAL. THE CLERK WILL DIRECT THE PARTIES TO FILE SUPPLEMENTAL BRIEFS AND WILL SCHEDULE THIS CASE FOR ORAL ARGUMENT AS SOON AS PRACTICABLE.) (Dkt'd 11/6/85).
04/20/87	128	-(APPL #2) (COPY OF SLIP OPINION FROM CCA REMANDING CASE BACK TO DISTRICT COURT FOR NEW TRIAL) (Dkt'd 04/22/87).
05/11/87	129	-(APPL #2) (SLIP OPINION OF ORDER OF CCA REMANDING THE CASE FOR A NEW TRIAL) (Dkt'd 05/19/87).

Date	NR	Proceedings
	130	Issuance of mandate of US Court of Appeals (APPL #2) on 05/11/87, cause remanded for retrial (Count) (CASE REMANDED FOR NEW TRIAL) (Dkt'd 05/21/87).

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

CRIMINAL No. 83-70025

UNITED STATES OF AMERICA, PLAINTIFF

v.

IKE KOZMINSKI, MARGARETHE KOZMINSKI,
JOHN KOZMINSKI, MIKE JAY ASSAM, DEFENDANTS

[Filed November 17, 1983]

INDICTMENT

COUNT ONE

**(CONSPIRACY TO VIOLATE CIVIL RIGHTS–
18 U.S.C. § 241)**

That from on or about 1967 to on or about August 1983, in the Eastern District of Michigan, Southern Division, IKE KOZMINSKI, MARGARETHE KOZMINSKI, JOHN KOZMINSKI and MIKE JAY ASSAM, defendants herein, did conspire, combine, confederate and agree together and with other persons known and unknown to the grand jury to injure, oppress, threaten and intimidate citizens of the United States, namely Robert Arthur Fulmer and Louis Molitoris in the free exercise and enjoyment of the right and privilege secured to them by the Constitution and laws of the United States; that is, to be free from involuntary servitude as provided by the Thirteenth Amendment of the United States Constitution;

It was part of the plan and purpose of the conspiracy that IKE KOZMINSKI, MARGARETHE KOZMINSKI,

JOHN KOZMINSKI and MIKE JAY ASSAM would compel the unpaid labor and services of Robert Arthur Fulmer and Louis Molitoris at the Kozminski farm in Washtenaw County Michigan in the Eastern District of Michigan by threats, assaults, beatings and by fear and intimidation and by forcing them to live and work in unsafe and unhealthy conditions.

It was further part of said conspiracy that IKE KOZMINSKI, MARGARETHE KOZMINISKI and JOHN KOZMINSKI would threaten Robert Arthur Fulmer and Louis Molitoris with incarceration by state authorities.

It was further part of the conspiracy that IKE KOZMINSKI, and MARGARETHE KOZMINSKI erroneously held themselves out as the legal guardians of Fulmer and Molitoris and denied professional medical and dental care to Fulmer and Molitoris.

OVERT ACTS

In furtherance of the conspiracy and to accomplish the objects thereof, the defendants at the time and places set forth did commit the following overt acts, among others within the Eastern District of Michigan:

1. On or about 1967 MARGARETHE KOZMINSKI took Robert Arthur Fulmer from a farm in Chelsea, Michigan to the Kozminski farm in Stockbridge, Michigan.

2. On or about 1972 IKE KOZMINSKI asked Louis Molitoris to come work on the Kozminski farm.

3. On or about May, 1975 MARGARETHE KOZMINSKI told a neighbor that IKE KOZMINSKI had been given legal custody of Robert Fulmer and Louis Molitoris.

4. On or about December 3, 1980, JOHN KOZMINSKI told a farm supplier that Fulmer and Molitoris were wards of the State and any statement they made should be ignored.

5. On or about January, 1981 IKE KOZMINSKI, MARGARETHE KOZMINSKI and JOHN KOZMINSKI misrepresented the living and working conditions of Robert Fulmer and Louis Molitoris to an employee of the Department of Social Services Adult Protection Division.

6. Beginning on or about March, 1981 and continuing to June, 1983 IKE KOZMINSKI and MARGARETHE KOZMINSKI returned Louis Molitoris and Robert Fulmer to the Kozminski farm on several occasions after they had run away.

7. On or about July, 1982, IKE KOZMINSKI and MARGARETHE KOZMINSKI denied professional medical treatment to Louis Molitoris after he was struck and gored by a bull.

8. On or about September, 1982 IKE KOZMINSKI and MARGARETHE KOZMINSKI denied professional medical treatment to Robert Fulmer after his thumb was severed in a farm accident.

9. On or about September, 1982 MIKE JAY ASSAM, an employee of IKE KOZMINSKI, threatened and chased Louis Molitoris with a pitchfork because of his failure to work as directed.

10. Beginning on or about February 1983 and continuing to August 1983, MIKE JAY ASSAM told Louis Molitoris that he could not leave the Kozminski farm.

11. Beginning on or about February 1983 and continuing to August 1983, MIKE JAY ASSAM returned Louis Molitoris to the Kozminski farm after Molitoris had run away.

12. Beginning on or about February, 1983, and continuing to July, 1983 MIKE JAY ASSAM beat and assaulted Robert Fulmer and Louis Molitoris.

13. On or about May, 1983, IKE KOZMINSKI beat and assaulted Louis Molitoris in order to compel his labor.

14. On or about August, 1983 IKE KOZMINSKI told a new employee that the employee should do anything

necessary to get Robert Fulmer and Louis Molitoris to work, including beating them, and that the employee should not believe anything Fulmer and Molitoris said.

All in violation of Title 18, United States Code, Section 241.

COUNT TWO

(HOLDING TO INVOLUNTARY SERVITUDE – 18 U.S.C. §§ 1584 and 2)

That from on or about December, 1980 to on or about August, 1983, in the Eastern District of Michigan, Southern Division, IKE KOZMINSKI, MARGARETHE KOZMINSKI, JOHN KOZMINSKI and MIKE JAY ASSAM, defendants herein, aiding and abetting each other, did knowingly and wilfully hold Robert Arthur Fulmer to involuntary servitude by preventing him from leaving the employment and control of IKE and MARGARETHE KOZMINSKI; in violation of Title 18, United States Code, Sections 1584 and 2.

COUNT THREE

(HOLDING TO INVOLUNTARY SERVITUDE – 18 U.S.C. §§ 1584 and 2)

That from on or about December, 1980 to on or about August, 1983, in the Eastern District of Michigan, Southern Division, IKE KOZMINSKI, MARGARETHE KOZMINSKI, JOHN KOZMINSKI and MIKE JAY ASSAM, defendants herein, aiding and abetting each other, did knowingly and wilfully hold Louis Molitoris to involuntary servitude by preventing him from leaving the employment and control of IKE and MARGARETHE KOZMINSKI; in violation of Title 18, United States Code, Sections 1584 and 2.

THIS IS A TRUE BILL

_____

FOREPERSON

LEONARD R. GILMAN
United States Attorney

VIRGINIA M. MORGAN (P25679)
Assistant United States Attorney

Dated:

[Excerpts from the Trial Transcript: Volume II]

[Testimony of Marie Powers]

[Direct Examination]

[11] Q (Ms. King): Did you ever live on a farm in Chelsea, Michigan, on Peckins Road?

A Yes, we moved there in December of '56.

Q All right. Do you recall the address of that farm?

A I believe it was 4691 Peckins Road, Chelsea.

Q What kind of farm was this?

A It was a dairy farm.

Q Who did you purchase the farm from?

A We purchased from Klingers.

Q At the time that you purchased the farm, was anyone living at the farm?

A Yes.

Q Who was that?

A The Klingers were on the farm at that time.

Q Did they have any farm hands living there?

A I believe they just had one, and that was Robert Fulmer.

Q Did you meet Robert Fulmer at that time?

A Yes.

Q Did you ever have Robert Fulmer as a farm hand at that farm?

A Yes.

* * * * *

[17] Q (By Ms. King): What did Mrs. Kozminski say to you with respect to Mr. Fulmer?

A Well, she said she had Bob on her farm, on her other farm.

Q Did she say how she got Bob?

A Yes. She said she kidnapped him.

Q When she said her other farm, do you know what farm she meant?

A A farm over by Stockbridge.

Q Have you seen Mr. Fulmer since 1968?

A Yes, we have.

Q Where did you see him?

A We stopped at the farm a couple times to check and see how he was feeling and how he was doing.

Q And can you describe that meeting, when was this meeting?

A About three years ago, I'd say, was the last time we saw him.

Q And where did you see him?

A We pulled up to the barn, and he came out and talked by the car.

Q The barn where?

[18] A At the Kozminski farm, the big dairy farm.

Q Can you describe the meeting without telling us what Bob said? Can you describe the meeting?

A It was very short. He came out to the car and looked very nervous, very thin.

MR. BARRIS: I object, Your Honor—withdraw that, Your Honor.

THE COURT: Overruled, go ahead.

Q (By Ms. King): He looked very nervous and very thin. Anything else?

A He indicated, he said, "I can't talk, I've got to get to work."

MR. BARRIS: I object, Your Honor.

THE WITNESS: Well, he told me.

MR. BARRIS: I object.

THE COURT: Hold on.

The grounds of the objection?

MR. BARRIS: Hearsay, Your Honor.

THE COURT: Objection sustained.

MS. KING: Your Honor, it goes to his mental state, which is relevant to the Jury's determination of whether or not he was—

THE COURT: (Interposing) The statement is used to prove the truth of the fact asserted, then it will not be admitted then. No other [19] purpose.

Q (By Ms. King): What was his physical appearance?
A Very thin.
Q Can you describe how he acted?
A Nervous.
Q Is that the last time that you saw him?
A Yes.

* * * * *

[CROSS EXAMINATION]

[23] Q [Mr. Barris] And you have indicated in your direct examination that he appeared to be intelligent, is that correct?

A Right.
Q But as I understand your direct examination, essentially the problem he had was that his sense of direction, in the sense of noticing where he was or where he was going, was not good?
A Right.
Q Is that a fair statement?
A That is right.
Q Other than that problem, did you detect any other deficiency in his mental capacity during the time that you had a relationship of employer, or whatever you want to call it, with Mr. Fulmer?
A He couldn't read.
Q All right.
A If that means anything.
Q Do you know if he could write?
A He could barely write his name.

* * * * *

[CROSS EXAMINATION]

[29] Q [Mr. Goldstein] Mrs. Powers, would you describe for me the situation when you had this conversation with Mrs. Kozminski?

A Well, my husband said we were together and we said—
Q (Interposing) No, I'm asking you your conversation with Mrs. Kozminski.

THE COURT: We don't want your husband's conversation.

A We said Bob was a good worker, and if she could get Bob to come to work for her, for them, he would be a good help. He was slow mentally, but he was a good worker to have around.

* * * * *

[Testimony of Michael Wilcome]

[34] **DIRECT EXAMINATION**

BY MS. KING:

Q Mr. Wilcome, where do you live?
A I live in Cheboygan. 2213 Cheboygan Highway.
Q Are you employed there?
A Yes. I work for my brothers, Wilcome Brothers, Incorporated.
Q What is your educational background?
A I got two years at Michigan State in Agriculture. I had education in the service under equipment and with people, working with people.
[35] Q Is Wilcome Brothers a farming operation?
A Yes, a dairy farm.
Q Directing your attention back to August of 1983, did you work for the Kozminskis?
A Yes, I did.
Q And how did you come to work for them?
A Through an ad in the Farmers Advance, which I receive weekly.
Q And you contacted the Kozminskis?
A Yes, I did.

Q Did you then arrange for an interview?

A I called them and gave them some background on myself, and he wanted some references, so I gave him them.

Q Did you meet with Mr. Kozminski regarding employment?

A Yes, I did.

Q Do you recall when that was?

A Yes. It was on a Saturday of August—or, I mean, of July—no. It was a Saturday in August. I think it was right around the first, somewhere in there.

Q Where did you meet with him?

A I met him at his house.

Q Did you see the farm during your interview?

[36] A Yes. I did.

Q I'm going to ask you to look around the courtroom and see if you see Mr. Kozminski in the courtroom and ask you to point to him and describe what he is wearing?

MR. BARRIS: We will stipulate.

THE COURT: Is there any question about who the Kozminskis are? Let's move along then.

Q (By Ms. King): Did you meet any farmhand at the farm during your interview?

A Yes, I did. I met Bob.

Q Did you agree to go to work?

A Yes. I agreed to go to work that day when I went down for my interview.

Q Do you mean that you agreed to start that day or you agreed with Mr. Kozminski that you would work for him?

A I agreed to go to work for him that day.

Q Okay. Did you actually start that day?

A No, I did not.

Q All right. Can you tell me what, if anything, Mr. Kozminski said to you with respect to who would be there to operate the farm?

A He told me he had two guys that were there to help me do the farming, and that I would tell them what [37] to do and to instruct them and show them what they had to do.

Q Did he tell you anything else?

A He told me that they were, that he had custody—that his wife, Margarethe, had custody of them and that for me to do whatever I had to do to get them to do their job, and not to let them walk over me, and to, if I had to hit them or whatever, I was to do that.

• • • • •

[50] Q (By Ms. King): Mr. Wilcome, did you have occasion to go inside the trailer?

A Yes, I did.

Q And when was that?

A This was on Friday of the first week I was there.

Q Can you describe the conditions which you saw [51] inside the trailer?

A Yes. I opened the door. The inside of the trailer was very filthy. There was bees and stuff flying around inside. I watched how I walked in the place. I sat down, did not move around too much because you might get stung. You sat down, usually, and got out of there as fast as you could after you was through. The place was very filthy. It was unfit for . . . I wouldn't live there under no circumstances.

Q How did the bees get in there, do you know?

A Through the vent that was above the stove. There was no fan there, it was just an open vent, no screen on the outside and there was no window on the inside.

• • • • •

[58] Q Did you know if the stove worked?

A No, I did not.

Q How many times did you go into the trailer?

A All the time I was there I went in the trailer probably, sometimes twice a day. Most of the time I went in there once a day.

Q What, if anything, did you do after going into the trailer?

A I went in, usually I knocked on the door before I went in, and I went in there just to talk to the guys.

Q Did you do anything as a result of the conditions of the trailer?

A Yes. From what I was told, when I had the interview with Mr. Kozminski and being told that they had custody of the guys, I felt very bad why somebody didn't check up and they didn't have a better place.

THE COURT: Don't get your feelings involved in this, now. We just want to get, report the facts, if you will, please.

THE WITNESS: Okay.

THE COURT: Move along, please.

A Yes, I went down and reported it.

[59] Q (By Ms. King): To whom did you report it?

A To the Social Services Department.

Q And what happened as a result of your reporting at the Social Services?

A They came out and looked over the situation and later on that week they picked up Bob and Louis.

Q All right. When did the Kozminskis return?

A They returned Saturday of the second week.

Q And when were Bob and Louis removed from the farm?

A On Friday, the day before.

Q All right. Let me back up a minute. During the time that the Kozminskis were on your property, who was in charge of that farm.

A I was.

Q What happened when the Kozminskis returned and found Bob and Louis gone?

A They were excited. They wanted them back.

Q The trailer that you have described, do you know what happened to that trailer?

A Yes. It got burnt.

Q How did it get burned?

A By throwing a match inside it.

Q Who burned it? Who ordered it burned?

A They had it set – well.

• • • • •

[61] Q What kind of clothes did Bob and Louis have?

A Their clothes was filthy, old and just plain worn out.

Q Did they fit them properly?

A No, they fit them like a bag.

Q Do you know what kind of food they had while they were there?

A I just know what I seen the few times – not what they ate all the time, but most of the time they talked about eating cold meat.

MR. GOLDSTEIN: Your Honor, I object.

THE COURT: If you just listen to the question and then just answer that question.

A Okay. They ate cold meat and sandwiches, and some [62] of the fruit and vegetables that I let them eat that I brought, that I got.

Q (By Ms. King): Did they have fruit and vegetables before you got there?

A No, I don't –

MR. BARRIS: I object. How's he going to know that unless somebody told him?

THE COURT: Sustained.

Q (By Ms. King): Do you know where the food came from, do you know how they got their food?

A Yes, they got it from Mr. and Mrs. Kozminski.

Q Did you actually see any of the food which they had?

A Yes, I did.

Q Can you describe what you saw?

A Yeah. I saw moldy bread and I seen maggots in their frying pan.

Q Is that the frying pan which is pictured in one of those photographs?

A Yes, it is.

Q Was there any place to wash the kitchen utensils?

A Not in the trailer, no.

• • • • •

[REDIRECT EXAMINATION]

[100] Q (By Ms. King): Were you ever paid by the Kozminskis?

A A little bit, after I confronted them.

Q Were you paid as much as you had agreed to when you agreed to work there?

A No.

Q All right. You were asked about a conversation with Bob Fulmer about going to his mother's funeral. Did he go to that funeral, do you know?

A No, I don't know.

Q You don't know, okay. During the time that you talked to Ike Kozminski on your interview, what did he tell you about Bob and Louis leaving the farm?

A He told me they weren't supposed to leave the farm.

• • • • •

[104] Q Did he give you a reason why he wanted to burn the trailer?

A Yes. He said they have nothing and they ain't going to have nothing.

Q Did Margarethe ever make that statement to you?

A I don't believe so.

Q Was she present when Ike made that statement?

A I don't—right offhand I don't know. She might have been on the other side of the car or something. I don't know if she heard it or not.

THE COURT: Keep your voice up.

Q (By Ms. King): Well, after reviewing the transcript is it not now your recollection that it was Mr. Kozminski that said that?

A Yes.

• • • • •

[Testimony of William Eskridge]

[DIRECT EXAMINATION]

[113] Q [Ms. Morgan] Did you observe any of the contents of the refrigerator?

A Yes I did.

Q And what were they?

A Primarily there was balogna. I believe that there was a piece of ham, several loaves of bread.

Q What was the condition of the bread that you saw?

A It was very moldy. There were several jars or bottles that I call fruit jars that had various types of things in them. I have no idea what they were.

Q Did you observe any of the sleeping conditions in the trailer?

A Yes, I did.

Q And what were they?

A Well, in the front portion of the trailer that would normally be the living room in a mobile home, that was the sleeping area of Bob. I observed a cot-type bed with no sheets, and one wool-type army blanket.

In the rear bedroom of the trailer, which was Louis' sleeping quarters, there was a bed, once again, no sheets, but an old-type army [114] blanket.

• • • • •

[Testimony of Alan Rohman]

[DIRECT EXAMINATION]

[134] Q (By Ms. Morgan): Okay, what would be Bob and Louis's responsibility with respect to getting the cows in?

A To bring them up into the barn, tie them in. There's little ropes off the stanchions that the cows have chains around their necks, and you'd tie the cows in with twine.

Q Then what would be their responsibilities after the cows were tied up?

A They cleaned behind the cows as the cows would drop manure. You have to keep the surface underneath the cows clean, so you had to keep, scrape down all the manure under them into the gutter.

Q About how many cows were there?

A When I started there was just under a hundred cows.

Q Did that amount get larger or smaller as you [135] continued to work?

A Smaller.

Q Okay. About how much smaller did it get?

A Approximately, we lost about 10 cows.

Q When you say lost?

A They died.

Q So there were a hundred cows all dropping manure into the same gutter?

A Yes, ma'am.

Q How is this manure removed from the barn area, would it be proper to say milkhouse?

A Yes, ma'am.

Q All right.

A It was removed by hand and wheel barrows into a spreader.

Q Was that the way that the trough was designed?

A No, ma'am.

Q How was the trough designed, if you know?

A It was designed with a gutter cleaner, an auto gutter cleaner. It's a thing where it's got little paddles that move through the trough and it brings everything around to an upgrade where it drops it into the spreader.

Q Did you ever have any discussions—was this thing working at the time?

[136] A No, ma'am.

Q Did you ever have any discussions with Ike Kozminski about repairing this gutter cleaner?

A Yes, ma'am.

Q And what if anything did he tell you about that?

A He told me that he didn't need it fixed, that it cost too much, that he's got these two guys, referring to to [*sic*] Robert and Louis.

Q Approximately how long would it take them, Bob and Louis, to clean this gutter by hand?

A It depended how long the cows were in. Usually an hour to two hours.

Q And how often would this gutter cleaner need to be cleaned by hand?

A Twice a day.

• • • • •

[138] Q (By Ms. Morgan): Did you ever see Ike Kozminski work with Bob and Louis?

A Occasionally.

Q All right. Did you ever hear him speak to the men?

A Yes.

Q Was it generally also the same or was it different every time?

A It was generally the same.

Q Do you remember?

A Do your work.

Q All right. What did he say to these men?

A He'd tell them to get get [*sic*] their jobs done and sometimes if they didn't get done on time he would say, "Well, you don't go eat breakfast until you're done cleaning the barn."

He used foul language quite often, yelling at them to hurry up and get things done.

Q What do you mean when you say foul language?

A Nigger motherfucker.

[139] Q He would call them those names?

A Yes, ma'am.

Q Did you ever see Ike Kozminski physically assault either Bob or Louis?

A On one occasion, Louis. I walked into the barn and they were screaming at each other and Ike slapped him across the side of the face, and Louis kept going on and on, talking.

Q What was Louis saying?

A I couldn't really understand, but he babbles kind of, just umm, umm, umm, umm, umm, like that. Ike said, "Shut up," and he did not shut up so he slapped him against the back of the head again.

Q What happened then?

A Louis started to work.

Q When was this incident, if you can recall?

A I believe it was May, ma'am.

Q Around May of '83?

A Yes, ma'am.

Q Did you ever see Margaret Kozminski or Margarethe Kozminski when she was with Bob and Louis?

A No, ma'am.

Q All right. Did you ever see John Kozminski when he was with Bob and Louis?

A Yes, ma'am.

[140] Q Did you ever see or hear what he said to the men?

THE COURT: Yes or no.

A No.

Q (By Ms. Morgan): You never heard him speak to the men?

A I heard him speak, but nothing of, just, you know, do your work.

Q Okay.

A He had given them jobs to do.

Q Did you ever see anyone under the employ of Mr. and Mrs. Kozminski physically assault either Bob or Louis?

A Yes, ma'am.

Q And who was that?

A Mike Assam.

Q All right. Did you see him physically assault Bob?

A Yes, yes.

Q What did he do?

A He would grab him and give him big bear hugs or choke him.

Q Did you ever see him physically assault Louis?

A Yes, ma'am.

Q What did you see him do with Louis?

A Quite often, almost, almost every morning he would, headlocks, forearms across the back, slap him. A [141] couple of times I even seen him hit him with an axe handle.

Q Did you have any discussion with Ike Kozminski about these physical assaults by Mike Assam?

A Yes, ma'am.

Q What did you tell Ike about that?

A I told Ike that he was beating on these guys, and there is no sense in it, nobody's going to work when they are getting beat up.

Q And what did Ike say, if anything?

A He said he would take care of it.

Q When did this discussion occur?
A It was February, late February.
Q Okay, of 1983?
A Yes, ma'am.
Q Were you present when Ike took care of it?
A Yes, ma'am.
Q Tell us about that.
A Well, it was the second time I had confronted Ike about this guy beating on on [*sic*] these two guys.
Q So the first time you had one discussion, Ike said he would take care of it and you saw another assault?
A So I came to him again because I thought there was nothing done about it.

[142] MR. BARRIS: I object to that, the part that he thought that. That part only.

THE COURT: Strike that part of the answer.

Q (By Ms. Morgan): What happened the second time you told him?
A He confronted Mike Assam in the barn and told him that he can't be beating on these guys.
Q Were you there?
A Yes, ma'am, I was.
Q Did Ike tell Mike Assam where he learned the information?
A It was pretty obvious.
Q Okay. Did Mike Assam ever say anything or assault you as a result of this?
A He confronted me. He said, "Why did you tell Ike I'm beating on those guys?"
Q Okay. And did these assaults continue to occur?
A Yes, ma'am.
Q Did they from time-to-time occur in the presence of Ike Kozminski?
A Once, ma'am.

Q Was this conversation before or after you had seen Ike himself strike Louis?
A This was before.

* * * * *

[145] Q Did you ever have any discussions with Ike Kozminski after you came back from wherever you were with Bob and wherever you were, about Bob and Louis leaving the farm?
A Yes.
Q And what if anything did Ike say to you?
[146] A I was told that they weren't supposed to leave the farm.
Q Did there come a time when Louis left the farm without you for some period of time?
A Yes, ma'am.
Q Do you know where he went on any of these occasions?
A Yes, ma'am. He was in our barn at one time sleeping.
Q When you say your barn, do you mean–
A The Kozminski barn.
Q The Kozminski barn, and how long was he gone on that occasion?
A Approximately a day-and-a-half.
Q He was missing?
A Yes, ma'am.
Q What if anything did the Kozminskis do?
A They looked for him.
Q And who looked for him, if you can recall?
A Ike Kozminski.

* * * * *

[153] Q Did you ever have any conversation with either Bob or Louis about what their state of mind was with respect to staying on the farm?

A They would like to leave.

Q How often did they say this?

MR. BARRIS: I object to that, Your Honor, as being hearsay.

MS. MORGAN: Your Honor, I think under the Rule, 803.

THE COURT: I think that will come in as an exception. Go ahead.

Q (By Ms. Morgan): How often did they tell you this?

A Quite often.

* * * * *

[CROSS EXAMINATION]

[186] Q [Mr. Goldstein] On any of the occasions when you went off the farm with them, did they ask you not to take them back?

A Yes, sir.

Q They did?

A Yes, sir.

Q They said, "Don't take us back, we don't want to go back?"

A Yes, sir.

Q And you did anyway?

A I did not want to get into trouble from Ike.

Q Did Ike ever tell you you would get in trouble if you did not bring them back?

A He told me that they were never to leave the farm.

* * * * *

[Testimony of John M. Radosevich]

[DIRECT EXAMINATION]

[199] Q (Ms. Morgan continuing): Did Bob or Louie ever do anything unusual when they had conversation with you?

MR. GOLDSTEIN: Your Honor, I'm going to object to the form of the question. Unusual is a word that has no clear and defined meaning in the law.

THE COURT: Well, it doesn't really very much help us, but do you understand what she is trying to say?

THE WITNESS: Yes.

THE COURT: All right, you may answer the question if you understand.

A One time when I was in their milkhouse Louie had come out from the barn into where the bulk tank was and he came up to me and was pleading with me to—

MR. GOLDSTEIN: Your Honor, I object.

MS. MORGAN: Your Honor, I think this testimony is going to go to Mr. Molitoris's state of mind and it is admissible.

THE COURT: Listen to the evidence then.

THE WITNESS: Louie came up to me and was pleading with me to call the police or some authority to get them out of there, to take him away. He said that to [200] tell them that he'd stolen something or he'd done anything, just to get them out of there so they could get away from the farm.

Q (Ms. Morgan continuing) To tell the authorities anything to get them out?

A Right. He wanted me to call them to have them come out and get him to get him away.

Q Did you do that?

A No, I didn't.

Q All right, and why not?

A Because I was afraid that if I got involved and we had lost the account with Mr. Kozminski, as far as his milk, that I would have lost my job over it.

* * * * *

[CROSS EXAMINATION]

[205] Q [Mr. Goldstein] Was Louie's behavior or de-

meanor on this one particular occasion when he came to you and said I want to leave, was it different than what you normally saw?

A It's hard to say. No, not really. Usually when I saw Louie he was friendly towards me and everything, but he was . . . he was kind of worried, you know. Well, I probably shouldn't start saying a bunch of things.

Yeah, he was kind of always uptight when I'd talk to him.

Q On this one occasion he was really agitated and excited?

A He was pleading with me. He didn't seem angry, he seemed more—

Q Scared?

[206] We, he was just pleading with me. I guess that's the best way to describe it.

• • • • •

[Testimony of Rose Gottfried]

[DIRECT EXAMINATION]

[208] Q [Ms. Morgan] Are you are [*sic*] also acquainted with two persons who worked on the farm whose names are Robert Fulmer and Louis Molitoris?

A Yes.

Q How did you know them?

A They were farm hands. They worked with my husband in the barns and the fields.

Q Did they every work with you?

A Yes, they did.

Q And what kinds of work did you do with them?

A I helped with the calves. I fed the calves, and there were times when I helped with the milking. I also raked hay several times.

Q Did the Kozminkis tell you anything about how much contact and what kind of contact you should have with them?

A They told us not to bother them, to leave them alone.

• • • • •

[210] Q Did you have any conversation at that time about how the men came to be on the farm?

A He told us that they were wards of the state.

Q Mr. Kozminski told you that?

A Yes.

Q In the presence of Mrs. Kozminski, that they were wards of the state?

A Yes.

Q Do you know who provided groceries to Bob and Louis during the period of 1977 for the 18 months that you lived there?

A Mr. Kozminski would take groceries to them once a week.

Q Did you ever hear Mr. or Mrs. Kozminski talk about Bob and Louis?

A Yes.

Q Did you hear Mr. Kozminski talk to Bob and Louis?

A Yes.

Q Can you tell us how he would address them?

A I don't understand what you are trying to say.

Q Okay. What kinds of conversations would he have with them that you overheard?

[211] A I can't say that I ever overheard any conversations.

Q Okay. What did you hear?

A If they were doing something wrong or didn't get something done right away, he would yell at them.

Q When you say he would yell at them, what do you mean?

A He would yell.

Q Would he just yell, "Hey, let's get the job done"?

A There were obscenities.

Q Did you ever hear Mrs. Kozminski speak to either one of them?

A No.

Q Did you ever see Mr. Kozminski physically abuse Bob Fulmer?

A One time I seen him hit him.

Q Can you tell us about this? Where did it occur?

A Outside of the apartment, between the house and the barn.

Q And under what circumstances did this happen?

A I don't know. I was coming out of the apartment just to see him swing at him.

Q How did he swing at him?

A He just took his hand like this. (Indicating.)

MR. GOLDSTEIN: Could you repeat that [212] motion? I didn't see it. Back hand?

THE WITNESS: Yes.

Q (By Ms. Morgan): Where did he strike Mr. Fulmer?

A Right about the level of the ear.

Q Did you ever see him physically hit Louis Molitoris?

A No.

Q Did Bob or Louis ever leave the farm while you were there?

A Just on Sundays when he would take them into town for dinner.

• • • • •

[CROSS EXAMINATION]

[222] Q [MR. GOLDSTEIN]: Now, you testified that there was a conversation in which Ike, at the very beginning had said, "Don't bother them." Is that right?

A That is right.

Q He didn't forbid you or make it a condition of your employment that you could not talk to these guys?

A He told us to ignore them. After hours we weren't to pay any attention to them.

Q He didn't forbid you, "Don't talk to them, don't have anything to do with them"?

A No.

Q "Just leave them alone, let them do their work"?

A Yes.

Q Did he ever forbid you from allowing them to leave the farm?

A He told us that they never left the farm, and we were not to take them into town.

Q Did he tell you to keep them from leaving the farm?

A No.

Q Okay. You indicated that you never saw them leave the farm except, I think you said, once a week where Ike and Margarethe would take them into dinner?

A He would take them on Sunday afternoons to dinner.

[Excerpts from the Trial Transcript: Volume III]

[Testimony of Jo Ed Franklin]

[DIRECT EXAMINATION]

[20] Q [Ms. King] Could you tell the ladies and gentlemen of the Jury how Bob and Louis looked, how they were dressed?

A Filthy, clothes torn. Looked like had not took a bath in quite some time. They did not have the proper clothes on, as far as the weather goes, and–

Q What do you mean by that?

A Well, the clothes were, Bob's coat was all ripped underneath his arms and you could see part of his skin, and it was getting cold out at that time of the year, and he did not have the proper boots on. They were all unlaced, open to where I'm sure his feet got wet, I mean, there was no way that they would not have got wet.

Q Were you ever there in the winter time?

A Yes.

Q What kind of clothing were they wearing in the winter time, if you know?

A Just no gloves. Like I say, it was the same old coats, if you want to call them coats. I think Bob had an old rotten shirt on that was already, at one time it was white but it was already cream colored.

Q Did you ever hear Ike Kozminski speak to Bob and Louis?

A Yes.

[21] Q How did he talk to them?

A In a, in a nasty way.

Q Well, can you describe what you mean by nasty way?

A Stupid. Could I say the words?

THE COURT: We want you to repeat what you heard. We would not want you to amplify. We don't want you to interpret, just repeat what you heard.

A Like stupid bastard, motherfucker, which was, which was used quite often on the farm. Not speaking to them like you would me or–

MR. BARRIS: Well, I object to that as a conclusion, Your Honor.

THE COURT: Sustained, strike it.

Q (By Ms. King): Did you ever hear Margarethe Kozminski speak to Bob and Louis?

A Yes.

Q How do you recall that she spoke to them?

A Similar to the same way.

Q To what you have just testified about?

A Yes.

Q Did you ever hear John Kozminski speak to them?

A Yes.

Q How did he speak to them?

A Well, I'd have to say again the same way that I [22] testified before.

Q All right. Did you ever see Ike Kozminski either physically abuse either Bob or Louis?

A At one time Ike and I and Bob was at the back of the barn and Louis, Bob did something to make Ike mad and Ike kicked him in the rear end and called him quite a few harsh names.

Q Do you recall when this was?

A That was, that was about the fall of '79.

Q All right. Did you ever see Margarethe Kozminski physically abuse either Bob or Louis?

A Yes.

Q Will you tell us what happened then?

A Bob was towing the tractor up the gravel road coming by just before you turn in by the barn and the tractor had a flat on it and Margarethe came out and snatched him off of it and told him, "You stupid bastard, what are you doing with that tractor with a flat tire on it," and threw him in the ditch and kicked him three or four times, and Louis was trying to say something, and Margarethe did not give him a chance to say anything.

Q Did you ever see John–excuse me–who was it that you, that she tore off the tractor, Bob or Louis?

[23] A Louis.

Q Did you ever see John Kozminski ever physically abuse either Bob or Louis?

A Yes. Louis.

Q All right. Will you tell us what you observed?

A Louis was, excuse me a minute. Louis was out fixing to come around by the bunk house and John wanted him to do something and apparently somebody else told him to do something and, and John grabbed him by the shirt and ripped this part of his shirt, just off in his hands, in words, the way his shirt was deteriorating–

Q Did John say anything to him?

A Yes. He cussed at him. Called him a mother, you know what.

Q Did you know that Bob and Louis lived at the farm?
A Yes.
Q Where did they live?
A At first contact—well, I guess not really first contact, first knowledge of me knowing of Bob and Louis living on the farm, they was living in the bunkhouse in one of the small rooms, be on the east side of the bunkhouse.
Q Did they continue to live there the entire time that you were going to the Kozminski farm?
[24] A No.
Q Do you know where they lived after that?
A They lived in t e house trailer that was parked adjacent to the bunkhouse.
Q Can you describe that trailer?
A Yes. It looked like it had, someone had stacked hay in it for numbers of years. It had spider webs all over the ceiling, infested with bugs. No running water, no lights, no toilet facilities, and no heat, and half the windows busted out.
Q Did it have any electricity that you know of?
A They was, Ike finally ran an extension cord out from, from the house that sits right back, well, should be, yeah, it would be as on the roadway there, and the extension cord burned up so I'm sure they did not have any lights after that.
Q Approximately when was this?
A That was in the fall of '80.

* * * * *

[28] Q (By Ms. King): Mr. Franklin, did you ever hear any of the Kozminski's make any threat or any statement to Bob or Louis about what would happen if they left the farm?
THE COURT: Yes or no.
A Yes.

Q (By Ms. King): To whom was that statement made?
A John made it to Louis.
Q And what was the statement?
A John told Louis, he said, "If you did not do what I told you, my dad would send you back to where you came from."
Q All right. Do you recall when that was approximately?
A It was about the middle of '80 in the summer.

* * * * *

[30] Q (By Ms. King): What did he do with the bread?
A He would drop off a couple of loaves to Bob and Louis and the rest of it would go down to the pigs on Waldo Road.
Q What is Waldo Road?
A Well, that's where the pigs were at on the other farm.
Q And who owns the other farm?
A Ike Kozminski.

* * * * *

[CROSS EXAMINATION]

[32] Q [Mr. Barris] Thank you. Now, this bread which Mr. Kozminski purchased down in Adrian was one-day-old or you say two-day-old bread, is that right?
A Two, three.
Q How do you know it was two or three?
A Because at the bakery they have it set up on certain dates on each one and the cheapest bread would be the older bread.
Q All right. Did you open any of that bread?
A Well, you could see it. Through the bag.
Q It was not contained within a wrapper?
A There was a wrapper on, yes, but it was clear so you could see through it.

Q Did you see any maggots in the bread?
A No, it was starting to get moldy.
Q I see, and you could see that, is that right?
A Yes.

* * * * *

[51]Q [Mr. Goldstein] With Ike. Mr. Franklin, you were present when this other trailer that you referred to was moved to a certain location and set up, is that correct?

A Now where it was moved from. I don't know but it was set up.

Q Set up, and you described at that time it had some cobwebs in it and dirt and so forth?

A Yes.

Q Were you present when the trailer was cleaned up?

A I don't think it was ever cleaned up.

Q So as far as you know it was never cleaned up so you weren't present when Al Rohman and Bob and Louis cleaned it up, is that correct?

A I don't think they cleaned it up.

* * * * *

[Testimony of Carol Jean Satterthwaite]
[DIRECT EXAMINATION]

[62] Q [Ms. Morgan] Do you know any of the farm-hands who have worked on the Kozminski farm?

A Yes, I do.

Q And who do you know?

A Bob and Louis, both.

Q And how long have you known them?

A Approximately ever since they have lived there, I guess.

Q Did you know Bob from any time before he worked on the Kozminski farm?

A No, I did not, but my husband did.

Q Okay. Have either Bob or Louis ever visited at your farm?

[63] A Yes, they have.

Q And which one?

A Both of them have.

Q Can you say has one visited more often than the other?

A Louis was probably down there once in a while more than Bob. We had probably seen Bob about three times a year, maybe.

Q Directing your attention to a time a couple of years ago, did Bob come to your farm?

A Yes, he came about ten o'clock at night.

Q And this is – how long did he stay on that occasion?

A Three days.

Q And what did he look like when he came to your farm?

A He was covered with manure from his head to his toe. He had been out, he said the manure spreader –

MR. BARRIS: I object to it, Your Honor, as being hearsay.

THE COURT: Sustained. Strike that part of the answer, just – strike all after from head to toe.

Q (By Ms. Morgan): Okay. Did you notice anything [64] else on him other than manure?

A Yes –

THE COURT: Yes or no.

Q What was that?

A His fingers were all white and infected, like, frostbite or that is what he –

MR. BARRIS: Object to that, your Honor, on the basis there's been no foundation laid that Mrs. Satterthwaite is a medical doctor or has any medical training.

THE COURT: I think this is all right, this is descriptive. It isn't very conclusive, but it is descriptive. It's helpful. Go ahead.

Q (By Ms. Morgan): Okay. Did you notice whether or not there was any blood on him?

THE COURT: Yes or no.

A Yes.

Q (By Ms. Morgan): And where was it, if you can recall?

A Coming from his nose and his face.

Q Do you recall approximately what time of year this was?

A Around this time of the year, January, or the end of January or first part of February.

Q Do you recall how he was dressed?

[65] A He had on boots and a coat and a hat.

Q Okay. Did he tell you how he, how he came to be manure-covered and white hands or blood?

THE COURT: Yes or no.

A Yes.

* * * * *

[67] Q (By Ms. Morgan): Mrs. Satterthwaite, can you tell us what Mr. Fulmer told you?

A He said the manure spreader had broke and he had to pitch if off by hand.

Q And how did he come to be in this condition?

A Because it was below zero out.

Q Okay. And then, immediately after, did he tell you how he came to be bloody or not?

A The herdsman had hit him.

Q Did he tell you when that had happened?

A Just before he had left there.

A Okay, and what happened then, after he made these statements to you?

A We took him down—he went downstairs and took a shower and took all the clothes off and we gave him some clothes to put on, and then we made him a bed down there.

Q In your home?

A Yes.

Q And then what happened to the dirty clothes?

A I washed them three or four times.

[68] Q Okay. Did you try to get him to go to the doctor at all?

A Yes, we did. We told him we thought he should go with his hands and he said: "No, just let me soak them in salt water and they will be all right."

Q So, did you do this?

A Yes. He soaked his hands in salt water for about two or three days off and on while he was there. Three or four times a day.

Q Besides soaking his hands in salt water, what else did he do when he was at your home?

A Well, we told him we have a shower in the basement, and he took a shower twice a day because he said his shoulders hurt.

Q What else, if anything, did he do?

A Sleep most of the time. He had been sitting down watching TV and he had been sleeping.

Q Did he eat?

A Yes, he did.

Q How much?

A Three meals a day, just the same as we do.

Q How much did he eat, if you can recall?

A He ate quite a bit.

Q Did anyone from the Kozminskis have contact with you?

[69] A Yes, John. He called us at 4 or 4:30 that next morning, hunting for him.

Q This would have been around milking time?

A Yes, when they start chores in the morning.

Q And what, if anything, did you tell John Kozminski when he called?

A I did not talk to him, my husband did.

Q Okay. Is—that was your husband who talked to him?

A Yes.

Q Okay. And then he stayed with you that day?

A Yeah, he stayed Sunday, Monday, and Tuesday, and Wednesday morning. That is when Margarethe—

THE COURT: Keep your voice up, ma'am.

A Wednesday morning was when – Tuesday night was when Darrel called Margarethe, and she came and got him Wednesday morning.

Q Did you have any conversation with Bob during that time regarding his mental state and whether or not he wanted to remain on the Kozminski farm?

A No, we did not. We tried to find a place for him but there was nobody that took people that lived in the house.

Q You're saying that he did not want to remain on the farm?

[70] MR. BARRIS: I object to that, your Honor. That wasn't what she testified to and it's highly suggestive.

THE COURT: You know better than that now. You don't lead this witness now.

Q Can you tell us what, if anything, Bob said to you about wanting to stay on the farm?

A He just said he did not want to go back. He did not have to.

MR. GOLDSTEIN: Would you repeat the second part of your answer, please?

A He said he did not want to go back if he did not have to.

Q (By Ms. Morgan): When did he say that to you?

A The same time.

Q What did you do as a result of him saying that?

A We tried to find a place for him.

Q What did you do to try to find a place for him?

A We called several – two or three different farmers around that had used help, and no one wanted anyone to live in the house, or had room for anyone in the houses.

Q Did you have any conversation with Bob, did you tell him anything about whether or not he had to go back to the farm?

[71] A No.

Q Okay.

Q Have you ever been told by the Kozminskis how Bob came to be on that farm or –

A They said –

MR. BARRIS: I object to the plural, your Honor.

THE COURT: Just listen to the question and answer the question yes or no.

A What –

THE COURT: What was the answer?

A Yes.

MR. BARRIS: Your Honor, I think the question was did the Kozminskis ever –

THE COURT: I understand that. We cannot go further without identifying.

MS. MORGAN: That's correct.

Q (By Ms. Morgan): Which of the Kozminskis had conversation with you about that?

A Margarethe.

Q And what did she tell you?

A She said she was, she was in charge of them.

• • • • •

[73] Q (By Ms. Morgan): And do you remember approximately when that conversation occurred or if it was more than one conversation?

A Well, I had a few with him, but one, this was after it happened to Bob, after Bob had been there. Louis came down sneaking around the back of the barns and he said to me: "You wouldn't shoot me, will you?" and we said: "No, why?" and he said: "That is what they told me you would."

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[Testimony of Darrel Satterthwaite]

[DIRECT EXAMINATION]

[93] Q (Ms. King) All right. How long have you known Bob?

A Since I was in high school and probably go way back to '51 when he worked for former employers.

Q How much contact did you have with Bob during the time that the Kozminskis owned the farm?

A Not too much. I used to deliver feed there years ago, seen him once in a while. He had come down to the house once in a while.

Q Approximately, if you can recall, how often would he come to your house?

A Oh, not over three or four times a year.

Q All right. Now, directing your attention to approximately March of 1981, do you recall an incident when Bob came to your farm?

A Yes, he did. I was going over to the barn one night and he came down and wanted to know if he could stay in the barn all night and I said, "Well no, you can't, you can stay in the house." I said, "Come on over to the barn and we'll check the stock," and I got the light on and I seen that there was blood had been on his face and he had had a bloody nose and asked him what happened and he said the herdsman had beat him up, had hit him.

Q Do you know who that herdsman was?

A No, I don't, I never met the man.

[94] Q All right. What kind of clothes was he wearing, if you recall?

A Well, they were quite dirty. He was all manure from one end to the other. Looked like someone had dumped him in it.

MR. BARRIS: I object to that, Your Honor, as being a conclusion.

THE COURT: It's a conclusion but it's descriptive. We will allow it to stand.

A So, I see he was cold and his gloves were partially frozen, so I took him right to the house and made him go to the basement and we have got a shower down there and

told him, make him take a shower and we gave him dry clothes and we fed him, and we had him there for three days.

Q Do you know what he did during the three day period that he was there?

A He did pile some wood in the basement for me, he wanted to do something; we have a wood burner in the [illegible]nent, and he watched television and slept most of the time upstairs.

Q Did anyone from the Kozminskis get in to it with you about Bob?

A John, he had called me, I believe it was, around four o'clock Sunday morning, wanted to know where [95] Bob was and I did tell him a lie; I told him Bob wasn't there, because Bob did not want anybody to know where he was at.

Q All right. Did anybody ever come to the farm looking for him?

A Yeah, John, he and this herdsman did about eight o'clock at any morning, came hunting for him.

Q That was the day after he arrived there?

A Yes, well, that next morning.

Q Okay. How long did Bob stay there?

A He was there three days, as far as I can remember.

Q Did you have any conversation with Margarethe Kozminski about Bob during that time period?

A Yes, after he was there three days, I called Margarethe that evening and told her that I had Bob there and he did not want to come back because the herdsman had beat him up, had hit him and he was scared to death of him and she told me that the herdsman had already left or was leaving, or one or the other. I told her that he did not want to come back as long as this employee was there.

Q Had you made any efforts to find him someplace else to stay?

A Yes, I made three attempts to find—to try and find another place for him, but people was [96] concerned about boarding him, you know, it's not a practice today to have a hired man and board him and take care of him.

Q During your conversation with Margarethe Kozminski, did she say anything to you about any injuries that Bob might have?

A Well, I told her what had happened and she said that—I'm not just too sure which word it was—but she said that he had fallen down.

Q All right. Did she say anything about having custody of him?

A Yes, she told me then that she had custody of Bob and Louis.

Q Did she say anything else with respect to that?

A No. I told her that I'd just as soon they did not come down there like that any more, you know.

Q Come down there like what?

A In Bob's condition, I did not want to see any more of that.

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[CROSS EXAMINATION]

[99] BY MR. GOLDSTEIN:

Q Mr. Satterthwaite, you have indicated that you have had a number of contacts with both Bob and Louis over the years, is that correct?

A Occasionally, yes.

Q And on all those occasions, would they come to your farm by themselves?

A Yes.

Q And would they leave the farm by themselves?

A Once in a while I would take them back up and a lot of times they'd leave by themselves. It would depend on how busy I was.

Q On the occasions other than this one occasion that you have described in March of 1981, didn't you [100] call the Kozminskis and they came back and picked them up; is that correct?

A Margarethe did come down and I believe it was on a Wednesday. That is too far back to remember.

Q That is the one time; I'm talking about other than that one occasion?

A No, they never picked them up.

Q They would just go back, whenever they were done doing what they did at your place, they'd go back?

A We'd go to town or whatever and they'd walk home or someone else would take them home.

Q There would be occasions when—not only when they had come over on to your place and you had to take them into town and they had done the same thing?

A Yes.

Q When you had the conversation with Margarethe Kozminski about taking them into town, do you remember when that was?

A No, I don't, but she scolded us not to take them into town.

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[Testimony of Betty Stiers]

[DIRECT EXAMINATION]

[112] Q [Ms. Morgan] Do you know John Kozminski?

A Yes, I do.

Q How was it that came to know them?

A We rented a house from them.

Q And which house was that?

A 5375 Waldo Road.

Q Have you ever heard that referred to as anything, as anybody's farm?

A The Schibley farm.

Q Okay and when did you rent that?
A September 12, 1982.
Q Okay. And how long did you reside there?
A Two months.
Q During that period of time that you were there, did you make acquaintance with any of the employees on the Kozminski farm?
A Yes, I did.
Q And which of them, if any?
A We met, I met Big Mike, I don't know his last name, and Bob.
Q Do you know what position Big Mike held on the farm?
A He was the herdsman.
Q All right. And can you describe him?
A He was big. About 6'6" 250, 275, dark hair.
[113] A Okay, did you ever know his last name?
A No, I did not.
Q Okay. So you said you met Big Mike, and who else?
A Bob.
Q And did you later come to know Bob's last name?
A He told me but I can't remember it.
Q Okay. How was it that you met them?
A They came down to the farm to feed the pigs, and we started—they started talking to us and we got—
Q These are pigs that were kept on the Schibley farm?
A Yes.
Q By yourself or by the Kozminskis or who?
A By the Kozminskis.
Q So who came to feed the pigs?
A On a couple of occasions, Big Mike and Bob, but most of the time it was just Bob.
Q How soon after you moved on the farm did you meet Bob, just approximately?
A The first time, maybe a week.

Q And what kind of contact did you have with him the first time you saw him, if you can remember?
A Well, he come down and he was going to hook up the water hose to the faucet on the house to water the pigs, and we, he started talking to my husband and myself and told us that he was told not to talk to [114] us because there was 12 hippies living in that house and that we were bad people.
Q Who was living in the house at the time?
A My husband, myself and my four children.

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[115] Q (By Ms. Morgan): Was he alone that first time he came to the farm?
A Yes, he was.
Q Did he ever tell you whether or not he could leave the farm?
A He said he wasn't supposed to.
Q Did you ever meet Louis Molitoris or a farm hand known as Louis?
A No, I did not.
Q Did you ever notice anything unusual with respect to Bob's physical condition?
THE COURT: Yes or no.
A Yes.
Q (By Ms. Morgan): What was that?
A He came over one day and he had a bandage on his right thumb, and we asked him about it and he said that he had got his thumb hooked, he was hooking a trailor to a tractor and his thumb went down in to the hole and it took off his thumb at the first joint.
Q Can you describe the bandage?
A It was filthy. It was a gauze bandage and it was just filthy.

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[Testimony of Dale Aprill]

[DIRECT EXAMINATION]

[125] Q (By Ms. King): Did you ever see Ike Kozminski physically abuse either Bob or Louis?

A Once.

Q Can you tell us what happened?

A Well, Louis wasn't doing his work, and Ike told him to do it, and he did not do it right away, and Ike slapped him across the back once and told him to do it and then Louis went to work.

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[Testimony of John Cares]

[DIRECT EXAMINATION]

[139] Q [Ms. Morgan] Did you ever see any of the farm hands on the farm at the times that you made calls there?

A Yes.

Q And did you ever know what their names were?

A I knew Bob and Louis was Bob and Louis, and I knew Glen Pierce who is one of the old herdsman.

Q And did you ever ask John about any of those people?

A I was, I never asked him directly, no. I was told about them from him though.

Q Okay. What did he tell you about?

A The first time I was there he told me that Bob and Louis were wards of the state and to ignore them.

Q What, if anything, did you observe about them or how did this come up?

A They were, we were near the barn, and they were close by at that time.

Q Were you close enough to observe anything about how [140] they were dressed?

A They were poorly dressed. Other times delivering feed I saw them. They were closer, you know, and they were dressed in rags, you know, kind of tied together.

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[Testimony of Jean Lindamood]

[DIRECT EXAMINATION]

[153] Q [Ms. Morgan] All right. And what, if anything, did Mrs. Kozminski tell you about how they came to be on the farm?

A Margarethe told me that they had custody of Louis from the Court, and that in return for room and board that he would work on the farm.

Q Did she say what court they got him from?

A Yeah, they said that they got custody from Judge Elden.

Q Did help say anything else about Judge Elden?

A That he was a relative of Ike's.

Q So she was only talking about the custody of Louis on this occasion?

A Right, just Louis, not Bob.

Q Did she say why Judge Elden awarded custody of Louis to them?

A That, yeah, she said that otherwise he would have to be institutionalized, and that they thought that it would be better for him to be on a farm than to be institutionalized.

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[Testimony of Dale Horning]

[DIRECT EXAMINATION]

[169] Q [Ms. Morgan] How would you describe Bob

and Louis's mental capacity if you are able to do so?

A They could, they could do a lot of work, but they needed supervision. They did a lot of work.

Q What kind of work would they do if you observed it or had personal knowledge of it?

A I have seen them hauling manure. I have seen them chopping hay for the cows, hauling hay night and day. Their main jobs was pitching manure.

Q Have you noticed any change in Bob's appearance in the last few years, basically since Homer died?

A Yes. They were real dirty. Their clothes did not fit them too well. They were losing weight, or he was. That was some of the main things.

Q Were they also, or was Bob or Louis, if you know, also dirty?

A No, years ago they weren't dirty. They used to go to fairs and go out to eat once and while. We've seen them out, but in the last few years you did not see them anyplace, other than working.

Q Did there come a time a few years ago back when Bob [170] asked you for something?

A Yes. Two years ago Christmas, about a week before Christmas, he asked me, he stopped and asked if I had a used pair of gloves because Kozminskis wouldn't buy him no more and the palm of the gloves were gone and his fingers were all cracked. So, I gave him a new pair of gloves.

Q Did you ever give Bob or Louis anything to eat?

A Just at Christmas. We took them Christmas cookies and gloves and cigarettes for a present, otherwise he never asked me for food.

Q Did you ever notice anything unusual about Bob's face?

A Once he had a cut under his eye. I don't remember which eye.

Q Can you describe the cut?

A It was a pretty straight cut.

Q Was it clean or—

A I don't remember whether it was a clean cut or a jagged cut.

Q Was it bandaged in any manner?

A No.

Q And do you recall when this was?

A It's been around two years ago that I seen that.

Q Did you ever see any bandages on his hands?

[171] A Yes, when he had his thumb cut off. That is about a year ago, a little over a year, maybe, dirty bandage on it.

Q Did you see the thumb or just see the bandage?

A I did not see the thumb then. Later I seen the thumb after it healed up sort of.

Q When you say sort of, can you describe—

A Well, it was partially open, the wound on it, when I seen it, but it was healing.

Q Okay, was it pussy, if you could tell?

A It did not look pussy then.

Q Did Bob ever tell you whether or not he wanted to leave the Kozminski farm?

A Yes, he told me different times, he says, "I have got to get out of here, they are killing me," he says. The work was getting him down.

MS. MORGAN: No other questions, your Honor.

THE COURT: Mr. Barris?

MR. BARRIS: Yes, thank you, Your Honor.

CROSS EXAMINATION

BY MR. BARRIS:

Q Based on your long acquaintanceship with Bob, would you say that he is a good worker?

A Yes.

[172] Q And he was fairly ambitious, was he not, in the sense that he could accomplish a lot of work?

A He could accomplish quite a bit.

Q Right, and when he made this remark, which you have attributed to Bob, "They are killing me, I have got to get out of here," you took that to be in the context that he was overworked, is that correct?

A Right. I seen him working night and day.

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[Testimony of Gizalla Korbini]

[DIRECT EXAMINATION]

[182] Q [Ms. King] * * * Did you ever attempt to write to your brother at the Kozminski—

A (Interposing) Oh, yeah, I wrote to him several times. I sent him cards for Christmas and his birthdays, and I sent him packages also. I bought him different things, but I never received any answer, if he received them or not.

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[CROSS EXAMINATION]

[193] Q [Mr. Goldstein] (Interposing) Mrs. Korbini, did Mrs. Kozminski ever tell you not to call again?

A My brother did.

Q Did Mrs. Kozminski ever tell you not to call again?

A No, she did not.

Q Did Mrs. Kozminski ever tell you that if you called again you would not be allowed to talk to him?

A No, she did not say that.

Q Your brother told you not to call again, is that right?

A My brother said that no use calling because, "They will not, when I'm too busy, they will not allow me to come to the phone."

Q When he is too busy?

A When he is too busy.

Q He did not say that he could never get to the phone, just when he was too busy?

A Yeah, when he was too busy.

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[Excerpts from the trial transcript: Volume IV]

[Testimony of Jerold Wallis]

[DIRECT EXAMINATION]

[9] Q [Ms. Morgan] Are you currently treating him for any problems that require medication?

A Yes.

Q All right. What is one of those?

A One would be hypertension.

Q All right. And what is hypertension, if you could just briefly tell us?

A Hypertension is elevated blood pressure.

A Okay. And what, if anything, did you do for that?

A He is currently on two medications for that. One is ateneral and other is hydrochlomic hydrosulfide.

Q All right. In addition to the hypertension, is there any other condition for which you are currently treating him?

A Yes, he was also found to have decreased vision for reading purposes, and he was referred to an opthamologist and given a prescription for glasses.

Q Okay. In addition to those two problems, are there any others?

A Yes, he was found to have degenerative joint disease, or arthritis, and he's on a medication for that as well.

Q When you had an opportunity to examine him, did you notice anything unusual with respect to his thumb?

[10] A His thumb showed evidence of past injury with missing distal tip of the thumb with scar tissue there.

Q It appeared to be an older injury, is that correct?

A All I can say is that it was older than several months. Beyond that it's difficult to tell.

Q Can you tell now whether it should have received medical treatment at the—

MR. BARRIS: (Interposing) I object to that, Your Honor.

THE COURT: You can answer that yes or no at the present time, whether it should have received medical treatment and did, in fact, receive medical treatment.

A I can't tell with certainly [*sic*] whether it should have received medical treatment.

Q (By Ms. Morgan): Did the patient complain of anything unusual with respect to the missing digit?

A He noted some tenderness in the area of the scar.

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[Testimony of Robert Cohen]

[DIRECT EXAMINATION]

[16] Q [Ms. Morgan] Directing your attention to August 31st, 1983, did you have occasion to examine Louis Molitoris?

A I did.

Q And this was at the internal medicine clinic at the University?

A That's correct.

Q And, at that time did you make any findings or any diagnoses that you can tell us about now?

A Yes. He had several abnormalities. He was a difficult patient in some respects to examine. He was unable to give a very clear history as to the events over the last several years. He did not complain of very much. In terms of his physical [17] examination, he had moderately severe hypertension at the time we saw him. I believe his blood pressure was 168 over 116, which is certainly more than moderate hypertension.

His skin was remarkable for some scars. At the first time I saw him I noted a well-healed scar on his right forehead which was old. There were no bony abnormalities on his head.

In terms of other positive findings, he had no teeth. He was noted to have scoliosis of the spine, which means that the spine was twisted, and his chest was somewhat curved, which is presumably an old finding as well.

He had an anotropic right testicle, which means that his right testicle was very small relative to the left. The left was normal, and we subsequently got a consult from the neurologist who documented that the left was, in fact, normal and the right was very small.

In terms of laboratory abnormalities, he had an EKG done, actually not the first time we saw him but subsequently, which was rather, showing possible hypertrophy of the left ventricle.

Q What does that mean?

A It's not a specific finding, we're not surprised to [18] see it in someone with high blood pressure of this magnitude. It's a finding to suggest that his heart was being damaged by his high blood pressure, that is, hypertrophied which is due to a high increase in the mass of muscle.

In terms of blood pressure, he had other findings to suggest that he had high blood pressure of long standing. Looking in his eyes, in the back of the eyes, there were what are called flame hemorrhages, which are little dots in the eye grounds where blood has jetted out of damaged blood vessels, and that is a finding seen in people with high blood pressure under treated for some time.

He also had narrowing of the blood vessels in the eyes which is, again, to suggest moderate hypertension of moderately long standing.

Other laboratory abnormalities that he had, he had a folic acid deficiency. His folic acid was 2.4. Normal in our lab at the university is 3.0.

Q What is folic acid?

A It's a nutrient, it's a small molecule. It's a nutrient that's involved in the production of red blood cells, primarily. Deficiency of folic acid tends to lead to anemia and it also leads to a [19] particular kind of neuropothy, which is to say damage to the peripheral nerves, which Louis did manifest.

I did not see among his physical findings when we saw him were a very sensitive peripheral neuropothy, which means that, in his case, from about his wrist to his fingers and from his mid-shins to his toes, he had diminished ability to perceive an pin prick, and, in addition, he had diminished ability to perceived a vibratory stimulus.

Taken together, these suggest that the peripheral nerves were damaged, were not functioning correctly out to his extremities, and this is seen, along with other things, with folic acid deficiency.

I should say among the physical findings when we first saw him was 143 pounds. I believe that he is 5 feet 11 and a half inches tall, and that's well below the norms for someone of that height, that weight of 143.

Q Was there anything else that would be consistent with the long term folic acid deficiency in your findings?

A There are other findings of folic acid deficiency [20] that he did not manifest.

Q All right. Let me ask you this question. Did he complain of diarrhea?

A Oh, he did, in fact. Whether he complained of it or not, I don't recall. He did have it. He actually had stool in his underdrawers when he saw him, and this was noted by his caretakers to be a finding.

Diarrhea is a common accompaniment of folic acid deficiency and it's noted in the standard text that on treatment or resolution of folic acid, the diarrhea spontaneously dissolves. In Louie's case, we tried to figure why he had diarrhea by stool checks, which he did not comply with.

And so he did comply which gave normal values which was, if it was on the basis of folic acid deficiency, we would not expect to find bacteria.

His stool did spontaneously dissolve over the succeeding four and a half months. When we saw him again on his fourth visit to the clinic on January 18th, his folic acid was 6.12, which is well within the normal range. His diarrhea had resolved and, interestingly, he did not have to be treated with folic acid, did not give him folic [21] acid vitamins; he was eating a better balanced diet. He picked up enough folic acid from his diet to normalize his values.

Q Okay. Did he have any chest X-rays?

A Yeah, he had a chest X-ray done the first time we saw him. It's fairly routine with someone with this degree of hypertension, looking at things like the size of the heart and the vasculature in the lungs, and his chest X-rays showed two important findings.

One showed changes consistent with chronic obstructive pulmonary disease, which is a disease primarily of smokers, and I think that's certainly consistent with Louis' long history of smoking. In addition, and I just reviewed the film this morning, there's certainly evidence of multiple rib fractures. The radiologist who read the X-rays called them residual –

MR. BARRIS: (Interposing) Your Honor, I'm going to object to this as being hearsay. He is now relating something which was apparently related to him by the radiologist.

THE WITNESS: I can give you my reading.

MR. BARRIS: Well, if it's his reading, that's fine.

[22] THE COURT: Let's stick to what you know.

A My reading of this chest film shows rib fractures of the right fourth, right fifth, and right seventh rib, and in the anterial lateral plane, as well as a fracture of the left third rib.

Q (By Ms. Morgan): Can you show us where those are?

A On the film, yes.

Q No, on you.

A Oh, on me, sure.

THE COURT: Stand up, please.

A The right fourth rib is about here (indicating), fifth and seventh, this is in this region where he has three rib fractures on the right. These are old and well-healed, so it's difficult to see when they occurred. He has a rib fracture as well, which is also old, in this region, high, maybe just under the left arm pit, in that region.

Q Are rib fractures like that consistent with trauma?

A Oh, certainly.

Q That would be like some kind of hit or—

MR. BARRIS: (Interposing) Well, I object to that, Your Honor.

Q (By Ms. Morgan): Well, can you tell us what trauma means?

[23] A I think those, I think in the way that you are using it, in terms of application of blunt force, certainly those rib fractures are consistent with blunt force. There are instances in sick patients who have other diseases where it takes much less force to fractures the ribs. Louis did not appear to have those kind of diseases, those generally include metastatic and, mineralization problems with the bones.

He appeared to have normal bones, and to break those ribs certainly required some application of blunt force.

Q Have you noted any change in his weight since the time you first saw him?

A Yes. It's impressive that, as we said, he was well below norms for weight when we first saw him. We saw him a total of four times, most recently on January 18th. At each time that we saw him his weight had increased

from the time before, and finally, on January 18th, he weighed 161 pounds, having gained 18 pounds in 19 weeks, and he was not obese when we saw him.

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[TESTIMONY OF RUTH LUTZ]

[DIRECT EXAMINATION]

[38] A I'm an employee of the Department of Social Service.

Q [Ms. King] How long have you been employed there

A Twenty-one years.

Q And in what capacity are you employed there?

A Presently, I am working as an adult services worker and have since 1972.

Q What are your duties as an adult services worker?

A All right. We provide services to elderly and disabled adults in an attempt to keep them in their own homes.

A major portion of my job is composed of making payments for household help, for persons who can no longer maintain their household.

Probably the second biggest portion of our caseload is composed of adult protective services, working with persons who are endangered, exploited, abused, neglected and who are vulnerable, in an attempt to help them improve their life, make changes as are necessary in their life.

Q Directing your attention to January of 1981, did you receive a complaint about two men at a farm in Chelsea, Michigan?

A Yes, the Department received such a complaint.

[39] Q And can you tell us whose farm that was, or where the farm was?

A It was the Kozminski farm located on Peckins Road.

Q All right. Do you know exactly how you received that complaint?

A No, we do not any more. We went through and did a purge of some of our case records last year and evidently the original file was lost.

Q What did you do with respect to this in January of 1981?

A We attempted, I attempted to make a home call to the farm, to the two men who were identified only to me as only Bob and Louis.

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[43] A We had talked about the nature of the investigation I was attempting to do. I talked about the fact that he could, you know, that he was free to leave the farm. Asked Bob and Louis whether they were satisfied there, whether they wanted to remain there and they indicated to me that they did. They indicated that they did not want any services.

Our protective services law is written in such a fashion that if a person refuses services, we cannot force an adult to accept changes in their life if they do not want them.

Q Did you do any further investigation?

A No, I did not.

Q All right. Did you have any further conversation with Mr. Kozminski?

A After Bob and Louis and John left the house, I did talk with Mr. Kozminski at some length.

MR. STRINGER: Your Honor, may we clarify which Kozminski we're talking about?

THE COURT: I couldn't hear what you said.

MR. STRINGER: May we clarify which Kozminski we are talking about at this point?

[44] THE WITNESS: I believe that I said that John and Bob and Louis left, that left only Mr. Ike Kozminski in the house.

THE COURT: Just identify which one. That's all.

THE WITNESS: Yes.

Q (By Ms. King, continuing): What was that conversation?

A He talked about the food he purchased for Bob and Louis. He talked about the fact that he was paying Social Security taxes for Bob and Louis, and I did not investigate whether or not they were actually being paid wages because I couldn't conceive of anyone paying Social Security taxes without actually having paid the wages also.

Q Did he tell you anything else?

A He talked about rental property that he had in Lenawee County; I recall that.

Q Did he tell you anything about how Bob and Louis were treated, if you recall?

A Well, part of the conversation around the food was around how well he fed them.

Q All right. Now, directing your attention to August of 1983. Did you receive a complaint with respect to these same men at the same farm?

[45] A Yes, I did.

Q All right. Do you recall when you received the complaint, approximately?

A It was the middle of August, I believe the 13th.

Q All right. What did you do in response to this complaint?

A All right. This complaint came from the Health Department. I contacted the person at the Health Department who had called us initially, he had called my supervisor. And we attempted to arrange a home call that we were going to do jointly.

Discovered that it was out of his area, and this was set up with another gentlemen from the Health Department, and we went out on the 15th of August.

Q All right. Can you tell us what you found when you went there on the 15th?

A All right. I found the two men, Bob and Louis, in a trailer that was very, very dirty. Smelled to high heaven.

They were not cleanly clad. Bob had on a ripped t-shirt and pants that were ripped at the crotch, had on tennis shoes which I felt were inappropriate.

MR. BARRIS: Well, I object to that, Your Honor, with what she–

[46] THE COURT: Just describe, please.

A Okay, he was wearing tennis shoes but was expected to do labor in the barn.

THE COURT: Just tell us what you saw.

A Louis was wearing a very dirty undershirt and blue jeans.

The house was very dirty, filled with dirty clothing. The stove had obviously not been used in a long time because there was dust on it and there was dust and debris and feces on the toilet, and also dust and debris in the bathtub.

I attempted to close the door on the trailer and, as I did so, the whole wall beside the door started wiggling, and the wall was not attached to the trailer at the floor.

There was a bare electric, a ceiling fixture hanging by the wiring in the living room, or main room of this trailer.

Bob slept in this main room. I don't recall seeing sheets on the bed. I do recall noticing that it was not really a mattress, was made of red vinyl. There was a part or corner of it sticking out of the blankets; it was vinyl, which indicated to me that it was sofa cushions that he was sleeping on.

[47] Q Did either of the men say anything to you when you got to the trailer?

A Yes.

Q Who?

A Yes. I walked in and introduced myself and mentioned the fact that I had been out there a couple of years before that, and Bob said, "Yes, I remember you. I lied to you then–"

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[52] Q (By Ms. King, continuing): Ms. Lutz, will you tell us what Bob said to you when you came in to the trailer in August of 1983?

A He said, "I'm not going to lie to you now, I want to leave the farm. I want to leave before Ike returns."

Q And did you, did Louis say anything to you?

A I turned to Louis and I stated to him, "Do you also want to leave," and he said, "Yes."

Q All right. And did you remove the men from the farm?

A Yes. I returned two days later and removed them.

Q And are they now under the jurisdiction of Adult Protective Services?

A They are self-serving services through the adult services programming. Jurisdiction, to me, means a court proceeding and we don't take jurisdiction in that fashion.

Q All right. Do you know where they are living now?

A They are living in an adult foster care home.

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[Testimony of William Powell]

[82] DIRECT EXAMINATION

BY MS. KING:

Q Mr. Powell, where are you living now?

A In Berkley, Michigan.

Q And are you employed?

A Yes, I am.

Q Do you know Ike Kozminski?

A Yes, I do.

Q Do you know Margarethe Kozminski?

A Yes, I do.

Q How did you meet them?

A I rented a trailer from them in December of 1978.

Q All right, and where was that trailer located?

A It was on their farm across the street from their house.

Q On Peckins Road?

A On Peckins Road, right.

Q Did you meet the two farm hands who worked at the farm then?

A Yes, I did.

Q Do you know where they were living at that time?

A Yes, I do. They were living in, it was a cinderblock building directly behind our trailer.

Q Did you hear Ike Kozminski talking to Bob and [83] Louis?

A Yes, I did.

Q And how did he talk to them?

A His temper and attitude was very short. There was obscene language used and his, his voice was always loud. There was a lot of yelling and things like that.

Q Did he call them by name?

A Yes, he did. On different occasions.

Q Where were you living then?

A We were in the trailer.

Q And were you paying rent there?

A Yes, I was.

Q Can you tell us how Bob and Louis were dressed during the time that you were there?

A They had old clothes that seemed to be stained and dirty. Their boots had no laces, their gloves, they had holes in their gloves and so forth. I offered them boot laces and a pair of gloves, I believe, just because it was in the winter time and it was cold. It did not appear to me that what they wore was warm enough for the winter.

Q Did you ever have a conversation with Mr. Kozminski about Bob and Louis?

A Yes, I did.

[84] Q Do you recall what that conversation was?

A The parts I remember of it were Mr. Kozminski was telling me how they were always breaking things, living like pigs, and they were stupid and things like that.

Q Did he ever indicate to you that he had custody of them?

A I was under the impression.

MR. BARRIS: I object to under the impression, Your Honor.

THE COURT: Sustained.

Q (By Ms. King, continuing): Did he ever tell you that he had custody of them?

THE COURT: Yes or no.

A Yes.

Q (By Ms. King, continuing): What did he tell you?

A He told me that they were from the State.

Q Did he tell you anything further with respect to that?

A To the best of my recollection, no.

Q Did he tell you that he was receiving money from the State to keep them there?

A I heard that, but I can't be sure that it was from Mr. Kozminski.

MR. BARRIS: I move to strike that, Your [85] Honor.

THE COURT: Don't pay any attention to that last statement, strike it from your minds and do not use it in your consideration of this case.

Q (By Ms. King, continuing): Did Bob and Louis work on the farm?

A Yes, they were working there.

Q Did they ever get yelled at by Mr. Kozminski about the work?

A I'm not sure of the question.

Q Well, did he ever yell at them because they weren't working or because they weren't working to his satisfaction?

A There was a couple of occasions where he was yelling at them to, pertaining to the work they did or anything like that, I can't be sure.

Q All right. Did you ever have a conversation with Louis about him wanting to leave the farm?

A Yes, I did.

Q Can you tell us about that?

A Yes. He would come to the trailer on several occasions and one time in particular he was talking with me and my wife, and he started weeping, and he asked me if I would take them out of there when we left.

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[Testimony of Lenore Wilson]

[Direct Examination]

[99] [Ms. King] Do you know Ike and Margarethe Kozminski?

A Yes, I do.

Q. And where did you meet them?

A At their home.

Q In Chelsea, Michigan?

A Yes.

Q You went to the farm in Chelsea?

A Yes, I did.

Q Did you go there to see your brother?

A Yes, I did.

Q All right. Do you recall, do you recall approximately when that was?

A About 11 years ago.

Q And during that visit did you have a conversation with Mrs. Kozminski about how Bob got to the farm?

A Yes, I did.

Q Will you tell us what that conversation was?

A Well, all she said was, she says, she used to talk to him, he had been walking up and down the road and she'd stop and speak to him, and she says, "I kidnapped him because I knew he was being abused on the other farm."

Q She said that she kidnapped him?

A Yes, and she laughed after she said kidnapped.

Q Did you see Bob during this visit?

[100] A Yes, I did.

Q All right. Can you describe the visit?

A Well, she invited us into her kitchen and she made coffee and we had cake, and we were all sitting around the table. I was there with my other brother and his wife, and she told Bob to just go over and sit down and be quiet. And there wasn't he really too much said, then we went out to the farm.

Q Did you try to talk to your brother Bob while he was there?

A Well, not really. He just kind of seemed withdrawn, quiet.

Q But did you try to talk to him?

A Uh-huh, yes.

Q Was Mrs. Kozminski present during the entire visit?

A Yes, she was.

Q Did you see where Bob lived?

A No, we did not.

Q Did you ask to see where he lived?

A Yes, we did.

Q What happened when you asked?

A She said, "You don't want to go up there, you know how men live," so we just dropped it there.

Q Did you see any part of the farm?

[101] A We went to the barn.

Q And who was at the barn?

A Bob; he was milking the cows and Mr. Kozminski was there.

Q Were you ever able to see Bob alone during that visit to the farm?

A No, we did not.

Q Do you recall if you ever visited the farm again?

A No.

Q No, you don't recall, or no, you did not visit the farm?

A I do not recall.
Q Did you call in an effort to set up a time to go and visit?
A Yes.
Q And what happened when you called?
A She said she'd rather we did not come out there because when we did come it upset Bobby and they couldn't do anything with him after we left.
Q Now, when you say "she", are you talking about Margarethe Kozminski?
A Mrs. Kozminski.
Q Did you ever write to Bob there?
A Yes, I did.
Q Did you ever get any response from him?
[102] A No. I did not.
Q Did you ever send him gifts there?
A Just pictures.
Q Okay. You sent him pictures? But you never heard from him?
A No, I did not.
Q Did he ever call you?
A No.
Q Did you ever ask Mrs. Kozminski to keep Bob and take care of him for the rest of his life?
A No, I did not.

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[CROSS EXAMINATION]

[111] Q (By Mr. Barris, continuing): Now, when you went to the Kozminski farm 11 years ago, how was Bob dressed?
A At the funeral home or on the farm?
Q Let's go to the funeral home. How was he dressed at the funeral home?

A Shabby.
Q In what respect?
A He was dirty and he was shabby.

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[Testimony of Robert Fulmer]

[134] DIRECT EXAMINATION

BY MS. MORGAN:
Q Mr. Fulmer, how old are you?
A 57 years old.
Q And where we are you born?
A I was born in Trenton.
Q And where did you grow up?
A At a foster home.
Q How long did you live in the foster home, till you were how old?
A Since I was five years old.
Q And where did you go after you left the foster home?
A Went to Wayne County Training School.
Q And how old were you then?
A When I went to the foster home?
Q When you went to the training school?
A I was 11 years old.
Q And why you go to the training school?
A Because my dad was an alcoholic.
[135] Q How long did you live in the training school?
A Since 1938.
Q Until when?
A Till '42.
Q And this was around Northville, Michigan?
A Yes, yes.
Q What did you do when you were in the training school, did they teach you to do things?

A I was teached to work on a farm and worked in a shoe shop during the, in wintertime.

Q Did you like the training school?

A I liked it, yes.

Q Did you want to get out of the training school and go somewhere else?

A I wanted to go out on my own when I was old enough.

Q And did you do that?

A Yes, I did.

Q And what did you do when you went out on your own?

A Worked on a farm.

Q And whose farm did you first start working on, if you recall?

A I do not remember that.

Q Okay. Did there come a time when you worked for the Klingers?

A Back in '54.

* * * * *

[138] Q Okay. Now tell us how you got to the Kozminski farm, tell us what you started to tell us before.

A Well, Ike used to come down to the end of the road on a Friday night and he'd pick me up, told me to drive the tractor back to Leroy's farm and leave the tractor.

Q You were on a tractor when you saw Ike?

A Right, and he told me—

Q Okay.

A And he told me to leave everything there, that we was going to take you away from the farm.

Q Ike said this to you?

A Yes.

Q Was Margarethe with him?

A Margarethe was with him then.

Q Did anybody, did you see Mr. Heller when you left?

A No. They left a note on the table that I was leaving.

Q All right. How do you know that that is what the note said?

A That is what Margarethe told me, she left a note on the kitchen table.

Q Okay. And did you see Mr. Heller after that?

A No, I did not.

[139] Q And why did you go with Mr. and Mrs. Kozminski?

A I figured I would have a good home to live at.

Q Did you and Ike talk about any money at that time, payment for your work?

A He did not tell me, he told me till we moved out to Stockbridge.

Q After you got in the car with Ike and Margarethe Kozminski and they left the note on the kitchen table, where did you go after that?

A To Stockbridge.

Q And that was to the other farm that the Kozminskis owned?

A Yes.

Q And what happened when you got there?

A He took me down to the barn and there was a guy named Homer, who was doing the milking.

Q And what happened then?

A He told me that I would be working with Homer with the farm work.

Q What kind of a man was Homer?

A I did not know much about him then.

Q Okay, and later on did you come to know what he was like?

A He was a good guy to work with.

Q And what kind of work did you do on the Stockbridge [140] farm?

A Helped chain cows and wash the cows.

Q And what else, what other kind of work, is that all you did on the Stockbridge farm?

A I cleaned up behind the cows, after the cows would sow.

Q And how did you do this, did you do this by hand or was there a machine?

A Had a wheel with a wheelbarrow and pitch it off by hand.

Q On the Stockbridge farm you had to do it by hand?

A Yes.

Q About how many hours a day would you work on the Stockbridge farm?

A I don't remember how many hours it was.

Q Okay. Were you paid for your work on the Stockbridge farm?

A Well he agreed to pay me $15.00 a week.

Q And when you say "he", you mean Ike Kozminski?

A Ike Kozminski.

Q And did you receive that $15.00 a week?

A Yes.

Q And how long were you on the Stockbridge farm?

A About a year.

Q Were you ever physically assaulted by Mr. Kozminski [141] while you were on the Stockbridge farm?

A He kicked me once.

Q Okay, could you tell us about that?

A I don't remember what it was. He kicked me by the door where we let the cows out.

Q Where did he kick you, I mean, where on your body did he kick you?

A On my back, my rump.

Q Did you tell—but you don't remember why?

A No, I don't.

Q Okay. Did he ever throw anything at you while—

MR. BARRIS: I object to this as being leading, Your Honor.

MS. MORGAN: All right.

THE COURT: Let's see if we can't let him testify.

Q (By Ms. Morgan): Did anything else happen on the Stockbridge farm?

A No.

Q Where you and Mr. Kozminski got into it?

A No.

Q Okay. How long were you at the Stockbridge farm?

A A year.

Q And then what happened at the end of the year?

A Moved over—in '68, over to where I was last.

* * * * *

[143] Q Okay. And how long were you alone on the Peckins Road farm?

A I don't remember then.

Q What kind of work did you do on the Peckins Road farm?

A Feeding cows.

Q Anything else?

A Cleaned cat pens, I did any kind of work there.

Q How did the things that you did at the beginning, when you first went to work on the Peckins Road farm, compare with the things you did the whole time you were there, did you also do the same thing or did you do different things?

A Oh, different jobs.

Q Okay. What about your hours when you first went there? Were they the same as the hours at the end?

A No, it was different.

Q Okay. How were they different?

A Used to be five o'clock in the morning, then later on they turned to about three o'clock in the morning getting up.

Q Okay. How about, how long did you work in the morning when you began?

[144] A Till about 8:30.
Q Okay. And how about later on?
A Sometimes later and sometimes did not go in.
Q You mean sometimes you just kept working?
A Did not go in to breakfast, sometimes.
Q About how often would that happen?
A Not very often.
Q Okay. Do you know why it got moved up from five o'clock in the morning to three o'clock in the morning?
A No, I don't.
Q Okay. Who told you what hours you had to work?
A Ike Kozminski.
Q Did Margarethe Kozminski ever tell you what hours you had to work?
A No, she did not.
Q Okay. Did John ever tell you what hours you had to work or what you had to do on the farm?
A Not that I remember.
Q Okay. How long did you continue to get paid $15.00 a week?
A I never kept track of how long it was.
Q Okay were you paid $15.00 a week after Homer came to the to the farm?
A I don't remember.
[145] Q Okay. Do you remember, what about, what happened to the payment?
A He never told me.
Q Okay. How long haven't you been paid or have you—were you also paid $15.00 a week?
A No.
Q Okay. Tell us about the payment?
A He just told me when he—when I started working that he'd pay me $15.00 every week. I don't remember when he quit—stopped paying me.
Q Did he stop paying you altogether or did it just go down a little bit?

A Down to a dollar a week.
Q Okay. Was that, do you have any idea when that happened, the dollar?
A No, I do not.
Q Okay. Was it before Homer died?
A I don't remember.
Q Okay. Were you—how long did you receive a dollar a week?
A I don't know, I did not keep track.
Q Did it go down after that or did he stop paying you after?
A He stopped all at once and when we stopped eating at Stivers.
[146] Q When you stopped eating at Stivers he stopped paying you altogether?
A Yes.
Q Is that how you wanted it?
A No.
Q Did you still continue to work?
A Yes, I did.
Q What happened when Homer, well, Homer eventually came to the farm, right?
A Yes.
Q And then Louie came to the farm?
A I don't remember.
Q Okay. Do you remember when Louie came to the farm, I mean, do you remember about him coming to the farm?
A All I can remember is he come in the 70's.
Q Okay and what happened when he came; how did you first meet him?
A Ike told Louie that he was going to stay there all the time and work with me.
Q And where was Louie to live?
A Lived at the trailer house with me.
Q Had you ever met him before?

A No, I had not.
Q And what kind of jobs was he to do on the farm?
[147] A Any job they told him to do, mostly clean calf pens.
Q And can you tell us what cleaning calf pens means, how do you clean a calf pen?
A With a shovel and fork, shovel it all by hand into a wheelbarrow.
Q Where were these calf pens?
A In the white barn, next to the milking barn.
Q And about how many wheelbarrowfuls would you shovel?
A I don't remember how many wheelbarrowfuls.
Q About how long would it take you to do the job?
A About a half-hour.
Q Okay and was this after you got the cows in?
A I don't remember.
Q Can you tell us, generally, what your day would be like on the farm, what time you would get up and what work you would do? About what time would you get up?
A About three o'clock in the morning.
Q Then what would happen?
A Louie or I would get the cows in alone.
Q Just the two of you?
A Just the two of us, we did not have no help.
Q And about how many cows?
[148] A About 75 cows.
Q And where would they be?
A Out at the back of the barn in the pasture, in the summertime.
Q And where would they be in the wintertime?
A Inside. Until it was a nice day and they had let them out during the daytime.
Q And what would you have to do to get them in?
A We used to, the two of us used to go in and drive what cows to be milked into the barn and then we used to

tie them in and then scrape the walks down when they was all in.
Q Scrape the what in?
A The back walk where the cows walked in.
Q Is that the gutters where the cows go to the bathroom; is that it?
A Yes.
Q And how would you scrape those?
A With a scraper.
Q Okay. Was this thing supposed to be automatic so that you did not have to do it with a scraper?
A We had to do it our own selves, by hand.
Q Did it have an automatic part?
A For gutter cleaner?
Q Yeah?
[149] A It did not work, they took it out.
Q Who took it out?
A Ike Kozminski, he told us to take it out.
Q Okay. Did he tell you why?
A Couldn't keep it going, cost too much money to keep it fixed up.
Q Okay, and about how long would it take you, from three o'clock in the morning until you got the cows in and tied up and cleaned the walks?
A About over an hour-and-a-half.
Q So this was about 4:30 in the morning?
A Time we started milking.
Q And you said generally you worked until 8:30 in the morning?
A Yes.
Q And what did you do for the rest of the time?
A Do odd jobs around the farm.
Q Okay, between 4:30 in the morning and 8:30 in the morning, what would you do?
A Whatever they told us to do. Washing the pipeline or sweep the cow beds out and then once a week, used to wash walls by hand.

Q Wash what?
A Wash the walls behind the cows.
Q By hand?
[150] A By hand.
Q Okay. And then would the cows be let out in the field again after the milking was done?
A They would tell us when to let them out for that day. If it was a nice day, they'd tell to us let them out.
Q Did you ever milk the cows?
A Quite a few times myself.
Q If there was a herdsman, did you milk the cows?
A Yes, they wouldn't milk them.
Q It depended on who the herdsman was?
A Right.
Q All right. About how long have you been milking the cows yourself?
A Well, I do it once in a while. When Mike wouldn't milk them I'd have to milk them.
Q When you say Mike, who are you talking about?
A Big Mike.
Q That was the last herdsman—last herdsman before the new Mike?
A Right.
Q After—let's see if we can get—when you say odd jobs, you would do odd jobs after the milking was done; what odd jobs would you do?
A Whatever they told us to do that day.
[151] Q Who would tell you what jobs to do?
A Sometimes the herdsman would tell us, then Ike would tell us to do something too.
Q Okay. Can you give, tell the Jury about what some of these jobs were that you did?
A Washing pipelines or sweep some cob webs down or go back and help clean the calf pens.
Q Okay, did you ever drive any farm equipment?
A No, not—no. I drove the tractors.

Q Okay, but you did not work on the other equipment?
A No.
Q Okay. Generally, or usually, what would you have for breakfast?
A Whatever we had there to eat.
Q Okay. Who got your breakfast?
A We got our own breakfast.
Q Okay, and then would you get lunch?
A Sometimes we would go in. Some noons we wouldn't get in to eat.
Q Is that you what [*sic*] wanted to do, sometimes you did want to each lunch and sometimes you did not?
A I wanted to eat all the time and they said we did not have time to go eat.
Q Who is "they"?
A The herdsman.
[152] Q Did Ike Kozminski ever say that?
A I don't remember if he did or not.
Q Then what what [*sic*] would you do in the afternoon?
A Odd jobs, what he'd tell me.
Q And who would give you these odd jobs?
A Sometimes the herdsman and sometimes if Ike is over, he'd tell me what to do.
Q Okay, and then after you finished the odd jobs in the afternoon, what would you do then?
A Find something to do.
Q Okay. Did the cows have to be milked the second time or brought in the second time?
A Twice a day, morning and night.
Q About what time would the cows be brought in at night for the evening milking?
A About four o'clock.
Q And who would do that job?
A Louie and I.

Q And then you would—would you—and then would you do the same things in the evening that you had in the morning?

A Yes.

Q And then what would you do when you finished with the afternoon milking?

A Wasn't always the same time every night. Sometimes [153] maybe it would be ten o'clock at night sometimes we'd work, or 9:30.

Q How come it took, how come sometimes it was longer and sometimes shorter?

A Because the herdsman wouldn't want to do anything, just sit around, and I'd have to do the milking a lot of times.

Q Okay. Was Ike Kozminski happy with your work, if you know; do you know?

A I do not know.

Q Did he ever tell you that you were doing a good job or a bad job?

A Sometimes he said I was doing a good job and sometimes he says I was lazy, doing nothing.

Q Okay. What would happen if something would break down to the [*sic*] on the farm?

A He would blame it on me because I would be there the longest, the one working on the farm.

Q And what would he say to you on those occasions?

A He said you should know better, you have been here 16 years, you should know what is supposed to be done.

Q How did you get your food on the farm?

A Ike would buy our groceries every week.

Q And would he bring these back in bags?

[154] A Bags, yes.

Q And where would he bring the groceries?

A He would bring them in his wife's car to the trailer house.

Q Would he put them in the trailer house or—

A We had to carry them in.

Q Okay. And what kind of groceries did you get?

A We got lunchmeat, hot dogs and bread, ice cream and some tatoes.

Q And where would you keep these items?

A In the ice box.

Q Did the ice box work?

A Not like it should have. The water would drip from the little freezer on top of all of our food.

Q Did you ever tell Ike about that?

A I told him it did not work like it should.

Q You told him what?

A That it did not work like it should be all the time.

Q And did he ever come in and look at the refrigerator?

A Not that I remember.

Q All right. What did he say to you when you told him the refrigerator did not work like it should?

A He said I should keep it defrosted all the time and [155] I told him the thing did not work.

Q Was there a place—was there running water in the trailer?

A Not all of the time.

Q Okay. Sometimes there was?

A Not every often.

Q Okay. Did you tell Ike that there was no running water in the trailer?

A He said he would get Crawford to come out and fix the pipes.

Q This is Bob Crawford?

A Yes.

Q Did Bob Crawford come out and fix the pipes?

A Whenever he got a chance, he'd come out and fix it.

Q And then they would break again?

A In wintertime they had been busted all the time.

Q And were they fixed in the wintertime?

A No, not all the time, no. We had to carry our water all the time.

Q Where did you carry your water from?

A From the milk house.

Q How did you feel about having to carry your water?

A I did not think it was right. We should have had water running all the time.

Q Did you tell Ike about that?

[156] A Yes.

Q How many days off did you get?

A Not very often at all.

Q Okay, did you ever get any kind of vacation?

A No vacations.

Q Did you ever get weekends off?—[*sic*] there a day on the weekend that you did not have to work?

A I don't remember that.

Q Did there come a time when you wanted to go [*sic*] your mother's funeral?

A When I had gone home for my mother's funeral they told me I had to be back that night for milking.

Q Okay. Did you tell them that you wanted to stay longer or not?

A No, I did not.

Q Okay. So you never told Ike that you wanted to stay longer?

A No.

Q Did you mind having to come back for the milking at night?

MR. BARRIS: I object the [*sic*] to that, Your Honor, as being irrelevant.

THE COURT: Sustained.

Q (By Ms. Morgan): Okay. Why didn't you tell Ike that you, you weren't upset about having to come [157] back then?

MR. GOLDSTEIN: Your Honor, that is leading.

THE COURT: Sustained.

MS. MORGAN: Okay.

Q (By Ms. Morgan): Tell us what happened about your mother's funeral, if you can remember? How did you find out about it?

A I don't remember how it was. Just told me my mother died.

Q Okay.

A They said one of our relations will be out to pick you up for your mother's funeral.

Q Okay. Were you satisfied with your working conditions on the farm?

A No.

Q Were you—let me ask you this: Were you around when Louie was working on the farm, right?

A Yes.

Q What, if anything, did you say about how Louie was treated on the farm?

A Well, pretty near every day I seen this Big Mike hittin' him all the time with the hoe in the back and then he used to strangle, had his arm around his neck and put him right down to the floor and [158] kick him.

Q Okay, and how often did this occur?

A Quite often.

Q Okay. What about the herdsman before Big Mike, how did he treat Louie?

A I don't remember that.

Q Okay. Was Louie ever treated well on the farm, that you can recall?

A Not that I remember.

Q Did you ever seek Ike Kozminski hit Louie?

A Yes, I did.

Q And can you tell us about how many times did you see that?

A Twice.

Q Okay, tell us about the first time?

A The first time was over to Schibley's cleaning the barn out one day, and he hit him with a ring above his eye, cut above his eye open.

Q Louie was working over at the Shibley [*sic*] farm and you saw Ike?

A Yes.

Q When you saw Ike hit him with his ring, what do you mean?

A Hit him up against the wall, the ring was on his hand.

[159] Q The ring was on his hand?

A Right.

Q The ring was on the right hand and the ring hit Louie's head?

A Yes.

Q And what happened then, was Louie injured?

A He started crying because he had a cut above his eye.

Q Okay.

Q Could you tell us whether or not the cut was bleeding?

A I saw the blood come down his forehead.

Q Okay. And what happened then?

A I don't remember what happened after that.

Q Okay.

Q What was the other time that you saw Ike hit Louie?

A By the stairway, coming down the stairs.

Q And where was this?

A Goes up to, out in the other part where the calves are.

Q It is on the Peckins Road farm?

A Yes.

Q And what happened on this time?

A Saw Louie, told me that he kicked him downstairs.

• • • • •

[164] Q Okay. Did there come a time when you went to the [165] Satterthwaites to stay for a couple of days?

A Yes, I did.

Q Okay, and what happened; did something happen on the farm that made you go to the Satterthwaites?

A Yes, it did.

Q Okay. Can you tell us what happened on the farm?

A Well, they told me to go out and work on the spreader one night.

Q Who, who told you?

A The Indian.

Q The Indian?

A Yes.

Q Okay.

A And I had not gone up there, I took off. It was too cold to work out there in the wintertime so I went down to Satterthwaites and I stayed down there two days.

Q Did you have a bloody nose when you went down there?

MR. BARRIS: Object to that unless something would be demonstrated on this record who did it and whether or not it is an individual. This is in, of course, the same conversation we had in the absence of the Jury, Your Honor.

THE COURT: Overruled. Go ahead now.

[166] Q (By Ms. Morgan): Did you have a bloody nose when you went to Satterthwaites?

A No, I did not.

Q Okay. Were you covered with manure when you went to Satterthwaites?

MR. BARRIS: Your Honor, I object to this on the grounds that it is leading.

THE COURT: That is quite leading and I don't think it is necessary, Ms. Morgan.

MS. MORGAN: Okay.

Q (By Ms. Morgan): How long did you stay at the Satterhwaites, if you can recall?

A Two days.

Q Okay. Did you ever tell them anything about wanting or not wanting to go back to the farm?

MR. BARRIS: I object to that as being leading, Your Honor.

THE COURT: Overruled, that is fair.

Do you know the question, sir?

THE WITNESS: No.

THE COURT: Repeat it exactly the way that you did, if you please.

Q (By Ms. Morgan): Did you ever tell the Satterthwaites anything about wanting or not wanting to go back to the farm?

[167] Not that I remember.

Q Okay. Did you want—were you satisfied with the working conditions on the Peckins Road farm?

MR. BARRIS: Your Honor, that has been asked and answered.

THE COURT: Overruled.

A No, I wasn't satisfied.

Q Okay. Why didn't you leave?

A Because I was afraid to leave.

Q Why were you afraid to leave?

A I did not know what they would do to me.

Q And when you say "they," who do you mean?

A Margarethe told me; I was afraid.

Q Margarethe told you something that made you afraid?

A Yes.

Q What did she tell you?

A That if I did not stay that they would put me back at the training school again.

MR. BARRIS: Your Honor, may I have the Shackney (sp) objection to that?

THE COURT: It stands.

Q (By Ms. Morgan): Okay. And this made you afraid to leave; is that you [*sic*] what said?

A Yes.

Q Did they ever tell you, either Ike or Margarethe or [168] John, tell you anything about anything else about what would happen if you left?

A No, they did not.

Q Have you ever used the telephone in the barn?

A I did once.

Q Okay. And why did you use the telephone then?

A I wanted to get some eggs from the neighbor.

Q Okay and why did you want to get the eggs from the neighbor?

A Because I wanted some eggs to eat.

Q Okay. And when was this?

A I don't remember when it was.

Q What happened after you used the telephone?

A Next day Margarethe came over and ripped the telephone off from the wall.

Q Did she tell you anything at that time?

A She told me I wasn't supposed to use the telephone.

Q Okay. And did you ever use the telephone after that?

A No, I did not.

Q And why not?

A Because they told me not to use it any more.

Q Did you ever have a conversation with Ike Kozminski about your wanting to quit the farm?

A I don't remember.

[169] Q Do you remember a time when your thumb was cut on the farm?

A Back in '82.

Q What happened then?

A I was working out at the field and they called me down there to hook onto a wagon and I went to put the pin through the draw bar into the chopper and I fell asleep and I fell forward and my thumb went in there.

Q Why did you fall asleep?

A Because I was tired.
Q How long had you been working at that point?
A I don't remember.
Q Okay. Was it a couple hours or –
A I don't remember.
Q Okay. But you fell asleep because you were tired?
A Yes.
Q And the end of your thumb was caught in between these two pieces of metal, is that right?
A Right.
Q And then what happened?
A Howard told Mike I had my thumb cut off and he rushed me up to Ike Kozminski's house.
Q Okay and who did you see when you got there?
A Margarethe.
[170] Q And what happened then?
A And Big Mike said he wanted to take me to the doctor and Margarethe says, "No, I will take care of it my own self."
Q Did you you [*sic*] want to go to the doctor?
A I don't remember that.
Q Okay.
Q Did Ike or Margarethe Kozminski ever tell you whether or not you could leave the farm?
A They told me I wasn't supposed to leave the farm.
Q All right. Did they tell you whether or not you should talk to anybody?
MR. BARRIS: Your Honor, I object to this as being leading.
THE COURT: I think this is fair under the circumstances with whether or not it's a fair question.
Q (By Ms. Morgan): Did he tell you about whether or not you should talk to people?
MR. BARRIS: I object on the ground that they are not on trial but the individuals are on trial and would I ask respectfully that we have an identification of the time and –

THE COURT: No, the question is a fair question to begin with, which refers back to the [171] earlier question which identified the individuals and they were Mike, or Ike or Margarethe, and after that, we will find out which one.
Now, I'm sure he needs the question again; why don't you do it individually?
MS. MORGAN okay.
Q (By Ms. Morgan): Bob, did Ike ever tell you anything about people coming on the farm and what you should do if they got there?
A Not to talk to them.
Q Okay, Ike told you that, is that right?
A And Margarethe.
Q And Margarethe.
Do you remember when they told you this?
A No, I do not.
Q Do you remember what happened at the time, where you were or where Ike was, where Margarethe was?
A I don't remember.
Q Did they tell you this on one, only one time or did they tell you this on more than one time?
A Quite a few times they told me. I don't remember how many times it was.
Q Okay. Sometimes would you leave the farm, even though you knew you should not?
A Not that I remember.
[172] Q Okay. Did you ever go into town with anybody?
A I used to go with Ike once in a while.
Q But you don't remember going with anybody else?
A I went with another guy to Chelsea, to the other farm, to Stockbridge; one of the guys that used to work there.
Q Okay. How much money were you paid, were you given any money after you stopped receiving a dollar a week?

A Well, we used to get money on Christmas, Easter and Thanksgiving and when the fair came.

Q And about how much money would you get at those times?

A About ten dollars.

Q And did you get money this last Easter?

A I don't remember. Yes, we did too, yes.

Q All right and who give you that money?

A Ike.

Q Okay and where did he give it to you?

A We did not get it. We only got our Easter candy and our bag. He brought it over and then Louie asked him where our money was because he said he saw it by our basket, that we were supposed to get it, and Ike said, "I will go over and get it right now", and then he come back and throwed it at me.

[173] Q Okay. Did he say anything at that time?

A He said I did not deserve it, "but I will give it to you."

Q Okay. Did you ever have a conversation with Ike about your leaving, quitting the farm and going home?

A Yes. I don't remember what day it was.

Q Okay. But that is okay, if you don't remember what day it was. Do you remember you [*sic*] what told Ike?

A That I wanted to go and see my sister and brothers. He said they did not care about you.

Q Ike told you that?

A Yes.

Q What did you say about that?

A I said my brothers care about me.

Q And what did Ike say?

A I don't remember what he said after that.

Q Okay. Did Ike or Margarethe Kozminski ever tell you whether or not they believed you told the truth?

A I don't remember that.

Q Okay. I know this is leading, but did they ever call you a liar?

A Yes.

* * * * *

[176] DIRECT EXAMINATION (Continuing)

BY MS. MORGAN:

Q Mr. Fulmer, in 1981, do you recall a social worker named Ruth Lutz coming to the farm?

A I do.

Q And what happened on that, at that time?

A I was afraid to tell the truth.

Q Why were you afraid to tell the truth?

A I was just afraid.

Q Okay. Did you know that she was coming?

A No, I did not.

Q Okay. Were you, how did you end up talking to her? Did somebody come and get you?.

A Oh, Ike come over and got Louie and I to come over to the house, had us dress up.

Q He had you dress up, clean up to come over there?

* * * * *

[CROSS EXAMINATION]

[180] [Mr. Barris] Q Did you go to Chelsea on occasion with Louie?

A I did once on a Sunday.

Q And do you know if you went to a bar or a saloon?

A Louie wanted to find if a bar was open on Sunday and some cops stopped us and told us there wasn't nothing open on Sundays so he told us to go back on the farm.

Q Did you tell that police officer that you were being held against your will at the Kozminski farm?

A Not that I remember.

Q Pardon?
A Not that I'd remember, no.
Q When you ran in to that police officer on this Sunday, when Louie was looking for a bar, was Mr. Kozminski present at that time?
A No, he was not.
Q Was Mrs. Kozminski present?
A No, she was not.
Q Was John Kozminski present?
A No.

* * * * *

[182] (By Mr. Barris): Now, Mr. Fulmer, I'm going to try and read something accurately and please listen to the question:

"Q When did you first feel like you wanted to leave? When did you first feel unhappy and that you wanted to [183] get out of there?"

And your answer was:

"A Ten years ago, when they told me to get out.
"Q They told you to get out?"

Your answer:

"A Margarethe did, yes.
"Q And that was ten years ago?"

And your answer:

"A Ten years ago.
"Q But you decided to stay?"

Your answer:

"A Stay because they couldn't get nobody to come in and work for them."

Do you remember that question, those questions being asked of you by a deputy sheriff, almost immediately after you were removed from the Kozminski farm in August of this year, sir?
A I don't remember.

Q Well do you recall now that Margarethe—and I will get away from you—did at one time ask you to leave and you refused to leave?
A She asked me once, yes.
Q And did you comply with her request that you leave?
A I don't remember that.
[184] Q Well, you did not leave, did you, sir?
A No, I stayed.
Q Why did you stay?
A I had noplace else to go.
Q Isn't it true that you, despite the fact that conditions might not have been magnificent, felt this was your home?
A No, I did not.
Q You did not feel this was your home. Have you ever told anybody that you thought that this was your home?
A Not that I remember.
Q So as I understand the reason that you refused to go, when asked to by Margarethe, was that you had no other place to go, is that right?
A That is right.
Q All right. Did the Kozminski's literally—well, physically, did the Kozminski's physically throw you off the farm when they asked you to leave and you wouldn't leave?
A No.
Q They kept you on, did not [*sic*] they?
A Yes.

* * * * *

[186] Q. * * * How long did you stay at the training school?
A Until '42.
Q And when were you born, sir?
A Born in 1926.

Q 1926?
A Yes, sir.
Q That would make you, I was born in '28, 57 or 58?
A 57, sir.
Q And you stayed, I am sorry, it was my fault, would you be so kind as to tell me again when you left the training school?
A 1942.
Q Okay, you were 16 then, is that—

* * * * *

[190] Q How did you get from the Kozminski farm to the funeral home where your dad—where your mother was laid out?
A My sister Lenore and her husband came after me.
Q Picked you up?
A Picked me up right at the house.
Q And you had a chance to talk to your sister and her husband on the way, did you not, from the Kozminski farm to Flat Rock?
A Yes.
Q Was your dad buried from a funeral home in Flat Rock, if you know?
A I don't remember that.
Q Do you know where your mother lived?
A Went to a Catholic cemetery.
Q Do you know where Flat Rock is?
A It's down towards Detroit.
Q Right.
A Between Flat Rock and Trenton where I stayed, on Outer Drive. Right on Outer Drive, the road we lived on, my folks.
Q Okay. Now, I don't know if I asked you about your [191] mother's funeral or not; did Lenore, your sister, pick you up to take you to your mother's funeral or your dad's funeral?

A My father's funeral.
Q Okay. During that time that you spent with Lenore going to the funeral home, did you ever complain to her about any conditions on the farm?
A No, I did not.
Q All right. Did she drive you back from, after the funeral, to the Kozminski farm?
A Her husband drove us back.
Q Did you complain to him about any conditions on the farm?
A Not that I remember.
Q Did you talk to your sister while you were at the funeral home when your mother was laid out?
A Not that I remember.
Q Okay. Were there a lot of other people there at the funeral home?
A I don't remember.
Q Did you complain to any of them about the conditions on the farm?
A No, I did not, that I remember.

* * * * *

[197] Q * * * if ten years ago Margarethe told you you should leave the farm and you refused, how long before that had Ike kicked you?
A I don't remember that Mr. Barris.
Q It was before, right?
A Yes.
Q And despite the fact that you had been kicked on this one occasion by Ike—
A Right.
Q When you were asked to leave, you would not leave, would you?
A No.
Q And the reason you wouldn't leave is you did not have any place to go?

A No.
Q Correct?
A Correct.

* * * * *

[201] Q Okay. Isn't it true that since you left the training school when you were 16, you have probably had an easier life now since you left the Kozminski's than you ever had before?

A Yes.

Q Now, sir, I'd like to go to the time when you were with the Kozminskis. Did Mr. Kozminski and his wife used to take you virtually every Sunday to a place called Stivers, which is a restaurant?

A Yes.

* * * * *

[203] Q Okay. Do you recall, sir, whether or not you ever went down to Detroit to see the Detroit Tigers play baseball?

A Yes, I did. Yes.
Q Do you like baseball?
A I sure do.
Q Did you enjoy the game?
[204] A I did.
Q How many times did you go to the game?
A I don't remember.
Q More than once?
A More than once, yes.
Q Did Mr. Kozminski take you?
A He did, and his boy once.
Q And did Louie go on those times?
A Yes.

* * * * *

[206] Q. Now, Mr. Fulmer, you did go on one occasion, at least, to the Satterthwaites farm, did you not, for two days?

A Two days, yes.

Q Yeah. And we know you have been to the ballgame and we know the other places. What other neighbors did you go see, if anybody?

A Ed Horning's.

Q Did you ever complain to Ed Horning about the treatment that you were receiving?

A Not that I remember.

Q Did you think Mr. Horning was a nice man?

A Yes.

Q And yet you said nothing to him, is that right?

A Not that I remember.

Q Okay. Other than Mr. Horning and the Satterthwaites, did you go to any other neighbors?

A Bollingers.

Q And are they neighbors?

A Yes.

Q Did you ever complain to the Bollingers—or Bollingers, you might well be right—concerning anything that you thought that was bad over at the [207] Kozminski farm?

A Not that I remember.

Q Not that you remember?

A No.

[Excerpts from the trial transcripts: Volume V]

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[Testimony of Robert Fulmer]

[Cross Examination]

[6] Q [Mr. Barris] To which of the Hornings did you complain that you were being overworked?

A Ernie Horning.

Q All right. Do you recall, was that before or after you were asked to leave the farm and refused to leave the farm?

A I don't remember.

Q Now, sir, you have indicated that you would work, as I understand it, three o'clock in the morning sometimes until ten o'clock that evening, is that correct?

A That is true.

Q Were you always working those hours?

A Not always.

Q All right. Isn't it true, sir, that you, in fact, enjoyed the work?

A I did.

Q And isn't it true that you actually liked what we might call farm life?

A I did.

Q And haven't you felt that the good health which you have enjoyed was due to, in part, being out in the fresh air?

A That is true.

[7] Q Wasn't there a time when Mr. Ike Kozminski helped milk the cows?

A That is true.

Q And would work right hand and foot with you, that is, right together with you?

A That is true.

Q All right. Now, I'd like to show proposed exhibit 132 for Defendant Ike Kozminski, and ask you, sir, if you can identify those two people, just identify them if you can, sir.

A The one picture, I know I can.

Q Who is the other person?

A I don't know who that other one is.

Q Look and see if it isn't yourself?

A Yeah, that is me.

Q Okay, thank you. Do you remember the circumstances under which that photograph was taken?

A That was tooken (sic) by his brother.

Q All right. You know his brother, is that right?

A Not too well.

Q Do you know that he works for the Seafarers Internation Union?

A I don't remember that.

* * * * *

[9] Q Do you recall an incident when she cooked a roast for you, brought the roast down. She then saw that you had not eaten the roast and you said you wanted to do your own cooking?

A I don't remember that at all.

Q Did you want to do your own cooking?

A I had no choice. We cooked our own meals. They used to bring some cook stuff over to us once in a while.

Q I am sorry. What would they bring you once in a while?

A Vegetable soup.

Q What else?

A They used to bring a roast over sometimes.

Q All right. And let me ask you this, isn't it true that from time-to-time you had chicken?

A It's true.

Q And from time-to-time you had ham?

A That is true.

Q And from time-to-time you had sausage?

A It's true.

Q And from time-to-time you had bacon?

A It's true.

Q From time-to-time you had lunch meat?

A It's true.

[10] Q And you'd have that lunch meat mostly at lunch, wouldn't you?

A Mostly all the time for sandwiches.
Q And did you have potatoes?
A They bought us potatoes sometimes.
Q How about peaches?
A Canned stuff once in a while.
Q How about pork and beans?
A Yes.
Q Hot dogs?
A Yes.
Q Pizza?
A Yes.
Q Applesauce?
A Yes.
Q Soup?
A What—say—
Q Soup?
A Canned soup or—
Q Well, either one, canned or homemade?
A Sometimes we have both.
Q Okay, thank you.
Ice cream?
A Yes.
Q Bananas?
[11] A Yes.
Q Bread?
A Yes.
Q You had a lot of bread, did not you?
A What was fit to eat, yes.
Q How about rolls?
A Sometimes we had rolls.
Q Doughnuts?
A Yes.
Q Pies?
A Yes.
Q Cereal?
A Yes.

Q Oatmeal?
A Yes.
Q Pop?
A Yes.
Q Soft drinks, that is?
A Yes.
Q How about beer?
A Used to give it to us once in a while.
Q All right. Milk?
A Not boughten milk.
Q You mean milk from the cows?
A Yes.
[12] Q But you did have milk, did not you?
A Yes.
Q And isn't it true that you always, every Thursday, were given a ration, if I can use that phraseology from my army days, of cigarettes?
A Yes.
Q How many, were you given a carton of cigarettes a week, or more?
A Just a carton.
Q All right. That is 20 packs—no, that is ten. I don't smoke.
A Ten in a pack, a carton.
Q Were they usually Salems?
A Not always, no.
Q How about, did Louie get a carton of cigarettes also?
A Yes.
Q All right.
Q And both you and Louie smoked, did you not?
A Yes.
Q Would you say that Louie smoked more than you did or about the same, if you know?
A I don't know, no.

• • • • •

[15] Q Yeah, when you say you were out of eggs, do I understand that there were a lot of times when you did not have eggs?

A Sometimes.

Q Yeah, and you liked eggs, did not you?

A I loved them.

Q How many eggs when you had them would you have at a time?

A I don't know.

Q Now, sir, you took care of the place where you lived, the trailer, along with Louie, did not you?

A I did.

Q Wasn't it your generalized job to keep the place in good shape?

A Well, I couldn't keep it clean without running water in it.

Q Are you saying you never had running water in it?

A We used to have.

Q When?

A I don't remember now.

Q Did you ever take showers over in the bunkhouse?

A I did.

Q You could go there any time to take a shower when [16] you wanted to?

A If I wanted to, yes.

Q The door was open, wasn't it?

A Yes.

Q And isn't it true that from time-to-time some of the hired men would suggest to you that, perhaps, it was about time to take a bath or a shower?

A When we had clean towels; did not have clean towels all the time to take baths with.

Q I see. Do you know if in your presence Louie was told, or at least it was suggested to him that it was time, if not overtime, to take a shower?

A I don't know nothing about it.

Q Okay. Isn't it true that you lived in the bunkhouse for a considerable length of time, once the bunkhouse was built?

A Sure, a time.

Q Do you know how many years ago the bunkhouse was built?

A Not that I remember.

Q Isn't it true that you at one time indicated that you wanted, in the spring time, to move out of the bunkhouse to go into the trailer?

A Not that I remember.

• • • • •

[26] Q During the time that you were with the Kominski's did you have dental work done for you?

A I had my teeth out.

Q And did the Kominski's pay for that?

A They paid for my teeth.

Q Do you remember if they at the time provided Blue Cross for you—do you know what Blue Cross is, sir?

A It's insurance.

Q Yeah, right. And if you get sick it takes care of you in the hospital or doctor in some instances?

A He said he had insurance on us.

Q Yeah, and do you know how long that was?

A I do not know.

Q Do you know either by Ike or by Margarethe, Margarethe, that they were paying Social Security for you?

A Yes.

Q Were you also told either by Ike or by Margarethe that they were paying what we call Worker's Compensation in case you were injured on the job?

A No.

• • • • •

[CROSS EXAMINATION]

[38] Q [Mr. Goldstein] Okay. So it was at least 25 years between 1942 and 1967 since you had been at the training school?

A I haven't ever kept track.

Q Okay. Mr. Fulmer, did not you tell—do you remember talking to Deputy Eskridge of the Sheriffs Department, great big guy with sort of redish-brown hair?

A I don't remember.

Q You don't remember when you were taken off the farm, either that same day or the next day, going to a little office in the Sheriffs department and talking, giving a statement to a man, talking to a tape recorder?

A Yes.

Q And do you remember telling him that you did not believe the threats that were made, you knew that they were a lie?

A Yes.

Q Mr. Fulmer, do you recall telling Deputy Eskridge that the reason that you stayed on the farm all these years was that you did not have any [39] place to go?

A That is true.

Q Do you recall an incident, approximately ten years ago, when Mr. and Ms. Kozminski got angry at you and told you that they wanted you to leave?

A I don't remember how many years ago.

Q Do you remember that incident?

A I remember Margarethe told me to leave once.

Q You do recall she told you to leave?

A Yes.

Q How long ago?

A I don't remember.

Q Do you recall telling her you did not want to leave?

A I don't remember that.

Q You did not leave, did you?

A No, I stayed.

Q They did not physically throw you out?

A No.

Q Mrs. Kozminski has never touched you, is that correct?

A She slapped me once.

Q Once. When was that?

A i don't remember when that was.

* * * * *

[Testimony of Mary Beth Detling]

[DIRECT EXAMINATION]

[47] BY MS. MORGAN:

Q Give us your name, please?

A My name is Mary Beth Detling. The spelling of my last name is D-e-t-l-i-n-g.

Q Mrs. Detling, where do you live?

A 340 Pierce Street in Chelsea.

Q Where are you employed?

A Presently I'm employed as a social worker at St. Louis Center, which is a center for mentally retarded youths.

Q Between 1973 and 1978, where were you employed?

A During the summers and Christmas breaks I was employed as a waitress at Stiver's in Chelsea, which is a restaurant.

Q What did you do there?

A I waitressed.

Q All right. Do you know Ike Kozminski?

A Yes, I do.

Q How do you know him?

A I used to wait on him.

Q Was anyone with him when you waited on him?

A Yes, two men.

Q Do you know who they were?

A They were called Bob and Louis.

Q All right. Did you ever have any conversation with
[48] them?
A No, I did not.
Q Can you describe what would happen when they would come in to the restaurant?
A Uh-huh.
Q Would you do so, please?
A Sure. They are pretty consistent as far as coming in. I have waited on them during that span of time maybe five or six times. They used to sit in the same place, order, Mr. Kozminski would order for them. They ate very well.

They were very hungry, at least appeared very hungry. They were very quiet. Mr. Kozminski never looked at me when ordering for them. They were not very clean. There was a smell to them and they just appeared both hungry and pretty scared.

Q What makes you say that they appeared to be hungry?
A How they ate. We have a salad bar there and they, when they left we would have to pretty much restock it, and how they ate in the sense of cleaning their plates very clean and they just appeared to be hungry.

* * * * *

[Testimony of Louis Molitorius]

[DIRECT EXAMINATION]

[65] BY MS. KING:
Q Mr. Molitoris, how old are you?
A Sixty.
Q Where were you born?
A Pennsylvania.
Q And do you recall when you came to Michigan?
A I don't.
Q Did you ever work in Detroit?
A Yes.

[66] Q Were you ever in Ypsilanti State Hospital?
A Yes.
Q Did you have a job in Ann Arbor?
A Yes.
Q Where did you work in Ann Arbor?
A At the cemetery.
Q Okay. Do you know Mr. Kozminski, Ike Kozminski?
A Yes.
Q Do you know Margarethe Kozminski?
A Yes.
Q Do you know John Kozminski?
A Yes.
Q How do you know them?
A I used to get a hair cut at Ike's barber shop.
Q That is at Ike's barber shop?
A Yes.
Q Did you ever work at the Kozminski farm?
A Yes.
Q Do you recall when you went there?
A I don't recall.
Q What kind of work do you do on the farm. Mr. Molitoris?
A I was cleaning the barn.
Q What else did you do there?
A I was taking care of the calves, too.

* * * * *

[68] Q What did he do to you?
A Well, he hit me in the head.
Q He hit you in the head?
A Yeah.
Q Did he have anything in his hand?
A No, he hit me with his fist.
Q With his fist?

MR. BARRIS: Your Honor, may we have a sidebar conference, please.

THE COURT: Do you want the reporter.

MR. BARRIS: Yes, Your Honor. (Sidebar conference with reporter).

MR. BARRIS: I wonder if we might inquire, is this man under medication, I mean—

MS. KING: Your Honor, the only thing that we're aware of is that he is on medication for high blood pressure; I'm not aware that he is under any other medication. He is frightened.

THE COURT: Did you want to do this now?

MR. BARRIS: Well, I don't know where else, other than—I don't know whom to ask. I mean, I accept what Miss King says to be truthful.

MR. STRINGER: Have him describe the medication.

[69] THE COURT: Do you want me to ask him?

MS. KING: No, I have no objection.

MR. BARRIS: If he knows, he probably doesn't even know.

THE COURT: Well, that is one of the problems.

MR. BARRIS: Yeah, I know.

MS. KING: Your Honor, I have no objection if you want to do this outside the presence of the Jury or in the presence of the Jury.

MR. BARRIS: I don't want it in the presence of the Jury. I mean, I have never met the man before, I have never seen him before.

MS. MORGAN: He is not on anything but high blood pressure.

MR. BARRIS: He is not, all right. Then if he isn't, he isn't.

Do you want any further inquiry?

MR. GOLDSTEIN: No.

THE COURT: Nothing then, all right. (End sidebar conference.)

THE COURT: Proceed, Miss King.

Q (By Ms. King): Mr. Molitoris?

A Yes.

[70] Q Did your head bleed the time that Mr. Kozminski hit you?

A Yes.

Q Did you go to a doctor?

A No.

Q Did you ask to go to a doctor?

A I asked him.

Q What did he say?

A He says no.

Q Okay. Were you ever injured at the farm by any farm animals, Mr. Molitoris?

A That was, that was a bull.

Q Can you tell us what happened?

A I, I crawled on fours out under the fence and I went down, down the road. There was a car that come towards me and he was going down and I looked across the road and I never seen nobody home. I just crawled to the trailer after.

Q I am sorry. You crawled to the trailer?

A Yeah, I crawled to the trailer and I went and got a towel and wiped myself off and I come in the bar on fours.

Q What kind, what did the bull do to you, Mr. Molitoris?

A With his horns.

[71] Q Where did he hurt you?

A (Indicating) Upwards here, towards my ear.

Q Is this the bull you are talking about?

A Yeah.

THE COURT: The witness is pointing to the right side of his head in front of his ear. The front right above his ear.

Q (By Ms. King): Do you have any injury to your side, Mr. Molitoris, from that?

A One side. That is on my left side here. I had Terry's wife, she was, she put a bandage on it. That was done by the Schibley's. I fell off there, the elevator.

Q Was that the same time that you were hurt by the bull or was that a different time?

A No, that was a different time.

Q When you say Terry's wife, is that Terry Gottfried?

A Yes.

Q It was his wife, Mrs. Gottfried, who treated your injury?

A Yeah.

Q Did you ask to go to the doctor when you were injured that time?

MR. BARRIS: Well, may I ask, Your Honor, of whom that request was made. Can it be [72] rephrased?

MS. KING: I don't–

MR. BARRIS: You mean of Terry Gottfried?

THE COURT: It's irrelevant the way she asked it. Find out. Ask if he asked either of the Kozminski's.

Q (By Ms. King): Mr. Molitoris, did you–

A Yes.

Q Did you ask either of the Kozminski's to take you to the doctor when you were injured by the bull?

A I asked.

Q Who did you ask?

A I asked Ike to take me to the doctor.

Q What did he say?

A No.

THE COURT: I didn't hear it, can you say it again?

A No.

Q (By Ms. King): He said no.

A Yup.

Q During the time that you worked at the farm, were you ever kicked by a calf or a cow or a heifer?

A There was, that was in my privates.

Q Did you ask any of the Kozminski's to take you to [73] the doctor when that happened?

A Yes, I asked him.

Q Who did you ask?

A I asked Ike if he can take me to the doctor.

Q And what did Ike say?

A He says no.

Q Mr. Molitoris, do you recall an incident when you were riding on a tractor and Margarethe came out and said something to you?

A Yeah. I was, I was helping Homer one time, just bringing the tractor and run out of fuel.

Q What did Margarethe say to you?

A And Margarethe says get off.

Q What did she do to you?

A She, I don't know, I think she slapped me or something.

Q She slapped you?

A Yeah.

Q Did she do anything else?

A No.

Q Mr. Molitoris, did you ever try to leave the farm or to run away?

A I left the farm three times.

Q Can you tell us about–

A And then I come in here to Ann Arbor. I put [74] application in up at the cemetery.

Q You came in to Ann Arbor and did what?

A I put an application up in the cemetery.

Q Is that where you used to work?

A Yeah, I used to work up there.

Q And what happened after that?

A I walked down there and I was coming down to the restroom, I had a cup of coffee, and I just kept on walking on the road here.

Q And what happened. Did you see Mr. Kozminski?

A And told Ike, Ike came on the road towards town, he toot the horn. I come towards his car and got in the back seat.

Q What did he say to you?

A He said, "When you get back to the farm, don't say anything."

Q Did he tell you not to leave the farm?

A Yes.

Q Do you recall when that was, Mr. Molitoris?

A I–

Q Did you try to leave the farm any other time?

A Well, I went to Chelsea lots of times.

Q You went to Chelsea?

A Yeah, went to see friends.

Q And what happened?

[75] A There was one friend there, he was, his name is Unk, he, he was a good friend.

Q Did you stay with Unk?

A I stayed there for all morning long on a couch.

Q Did one of the Kozminski's come to get you?

A Yeah, John come down with a pickup and he took me back.

Q What, if anything, did John say to you?

A He said, "When we get back we're going to talk," talk to his dad, and I went back to the trailer.

Q Did he tell you not to leave the farm?

A Yes.

MR. STRINGER: Your Honor, I'm going to ask to have the answer stricken under these conditions.

THE COURT: I'm going to allow some leading questions. The Jury will have to judge that.

Go ahead.

MS. KING: Thank you, Your Honor.

Q (By Ms. King): Did you run away any other time, Mr. Molitoris?

A Oh, I went, I went down, down the road to Schibley's there, up in their barn and went to sleep there in the haymow.

[76] Q When you say Schibley's–

A I stayed all morning down there until, oh, Mike, Mike come down.

Q When you talk about Mike, are you talking about Big Mike?

A Big Mike, Mike, yeah. We was, first he come, Schibley, he seen somebody come up, up there to the barn and open up the door and the door opened.

Q And Mike came to get you. Did you go back to work?

A No. I went to, up the road and I went to the trailer.

Q Did you go back to work the next day?

A Yes, I went back the next day.

Q All right. After the time you ran away when John came to get you, did you go back to work the day after that?

A Yes.

Q After the time that Ike came to get you in Ann Arbor, did you go back to work?

A Yeah.

Q Did you ever get paid for your work, Mr. Molitoris?

A No.

Q Did any of the Kozminski's ever tell you they had papers on you and that you could not leave the farm?

[77] A They says you was here for a lifetime, till you–

Q Who told you that?

A Says, Mike told me that one time there.

Q That's Big Mike?

A That was Big Mike.

Q Did Ike Kozminski ever tell you he had papers on you?

A I don't recall. I asked him one time there if I had papers there. I asked him about them, the tax, taxes, tax papers. I want the forms.

Q Did Ike Kozminski ever tell you you had to stay there for the rest of your life?

A I don't, I don't recall. There was a paper from the house from Pennsylvania. I didn't recover that there.

MR. BARRIS: Your Honor, I am sorry, I can't understand some of this. I just can't understand the witness in some respects.

THE COURT: I'm having difficulty, too, how's the reporter? If you have any difficulty, ask to have the answer read back. I don't know how to make it any better.

Q (By Ms. King): Mr. Molitoris?

A Yes.

Q Did Ike Kozminski ever kick you, that you recall?

[78] A Yeah. Once, John, at the Schibley's farm and then I jumped the fence over. I ran up toward the road and Ike, well, he went, he went down with the pickup, on 52 and from 52 he come down towards Ed's place and that's where I was sitting there, sitting, and he told me to go back and down to help Bob a little bit and there was, I don't know how long it was, and somehow he – and I told him I was sore.

Q You told him what?

A Told him my leg was sore. It was sore when, when I jumped the fence there.

Q Did you have to go back to work then?

A Yeah, I had to go. I helped Bob down there with the pigs.

Q Mr. Molitoris, where did you live on the farm?

A I was at the trailer there and then when I, when I come back from, from downtown I brang some there, the stuff was burned down in the trailer anyway, the clothes, what I brang from town, I brang. There was cockroaches up in there and there was, that is why eveything was all burned in, even my pictures and my teeth.

Q Mr. Molitoris, who told you that these things had to be burned up?

[79] A Huh?

Q Who burned your teeth and your pictures?

A We had to take them out and burn them. We burned them out there on the grass there.

Q Who told you you had to burn them?

A Ike says that and Margarethe.

Q Told you that you had to burn everything in the trailer?

A Yeah, because the cockroaches in the boxes when I came from town and my trunks, my trunks, I had to find – back to the barn there and by the silo, by the – the spreader shed.

Q Did you tell Mr. and Mrs. Kozminski that you had pictures and that your teeth were in there before everything was burned?

A Yes.

Q Do you recall when that was?

A I don't, I don't recover that. No, that was a long, long time.

Q Mr. Molitoris, are you taking any medicine?

A Yes.

A Yes, I'm taking torasine (sic).

MR. BARRIS: Torasine?

A No, I'm taking water pills and for heart, heart pills.

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[CROSS EXAMINATION]

[84] Q [Mr. Barris] Can you tell us how old you are, please?

A I'm 60 years old.

Q All right.

A And I was born in Pennsylvania.

Q When did you come to Detroit, Mr. Molitoris?

A That was a long time.

Q Okay. And then did you eventually come to Ann Arbor – Mr. Molitoris, if you don't understand my question, will you please tell me and I will try to say it some way else?

A No, I did not.

Q Okay, swell. Let me know at any time, will you please?

A Yes.

Q Thank you. Do you remember coming to the City of Ann Arbor?

A Yes.

Q All right. And do you remember meeting Ike at the barber shop?

A Yeah, I, I was getting haircuts over there.

Q Right. Do you remember where you were sleeping before you met Ike.

A I used to sleep down in the barber shop.

[85] Q He let you sleep in the barber shop?

A Yeah, once.

Q Before you were sleeping down in his barber shop, is it not true that there were some times when you were sleeping in cardboard boxes in the wintertime down by the river?

A Yeah. There was a jungle.

Q And there were other men there, weren't there?

A Yes.

Q And do you remember a man by the name of One-eyed Charlie?

A Yes.

Q Who is he?

A That is, he used to be down there. I went down there with the herdsman.

Q Herdsman?

A Herdsman, yeah.

Q One-eyed Charlie was a herdsman?

A No, there was another guy which used to go with me. His name was—

Q Who was—

A Herdsman.

Q Well, was there a time during the winter when you would sleep in an old icebox at night?

A Yeah, that was down in the alley.

[86] Q Down in the alley?

A Yeah.

Q You didn't have a job at that time, did you?

A No, didn't have no job.

Q And these other men, as far as you know, did not have jobs either, did they?

A Yes.

Q You mean yes, they did have jobs or did not?

A I—no, I don't think. We just—

Q Now, Mr. Molitoris, back there when you were sleeping in the icebox and sleeping in cardboard boxes, isn't it true that you were drinking quite a lot of alcoholic beverages?

A That was, that was wine.

THE COURT: Wine, he said.

Q (By Mr. Barris): Wine?

A There was wine. There was homemade wine.

Q Yeah, and do you know what it means to be drunk?

A Yeah, I was, I was intoxicated.

Q And you were convicted on one occasion of that, were you not?

A I was, I was in Chelsea jail there for one morning there and—until they let me loose.

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[91] Q Mr. Molitoris—

A Yes.

Q Please, as best you can, listen to my questions, would you?

A Yes.

Q Did you go with Ike to Stivers?

A Yes, we went every Sunday.

Q Every Sunday, and did you eat a lot there?

A We had hamburg, sirloin steak.
Q Sirloin steak?
A Yeah, mashed potatoes and gravy.
Q Did you enjoy yourself at Stivers?
A Yeah, that was, that was once that I, I met friends and I stayed by the bar there once and I went, once I went up—I had a ride with some sheriffs I know, they were glad to take me up and when I come back I come down inside and I, and I was, I was eating, eating my dinner.
Q Mr. Molitoris, do you remember once going to Stivers by yourself?
A Yes.

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[96] Q How many times would you say you went to see the Tigers?
A We went, I think five times, I think.
Q All right. Did Ike take you to see the Tigers each time?
A He, he took us sometime and then John took us once.
Q When you were at the Detroit Tiger game, did you know that there was a refreshment stand where you could buy beer?
A Yeah, I had, I had a few, I had a few beers.
Q When you would go off the farm to various neighbors, well, first let me ask you have you done that while you were living at the Kozminski farm, go around to various neighbors and talk to them?
A Neighbors?
Q Yes.
A I went one doctor. I went down by, past his farm. That was, I got X-rayed down there once to the guy, he was a doctor. He used to, he used to, he used to be a doctor and doctor at the state hospital, they moved there.
Q Do you know his name, Mr. Molitoris?

A No, I, I forgot his name.
Q Do you know Mr.—do you know any people or [97] persons, person by the name of Horning?
A Yeah, that's Ed Horning.
Q Did you ever go over to his place?
A We, we used to stop there and talk to him.
Q Uh-huh. Did you ever have a drink of beer there?
A No.
Q Did you get any food there?
A Apples and tomatoes.
Q Okay. Who else did you go to visit other than the Hornings and apparently this doctor?
A Dale Horning, that was one. That was on a Sunday. I come down there, I walked down there. That was by myself.
Q By yourself?
A Uh-huh.
Q Who else beside Dale Horning, apparently Ernie Horning and the doctor, did you see anybody else?
A Nobody else.
Q Do you know people by the name of Satterthwaites?
A Yes. That was where I used to go down there and then the boy, well, I used to, I asked him to take me to Chelsea.
Q Did he do it some of the time?
A He took me up a couple of times.
Q Were you kind of looking around for a bar where you [98] could get a drink in Chelsea?
A No, I wasn't looking for that. I was looking for some place where I can find a way, find a room for not too long, to stay away from the farm.
Q Did you ever go to Chelsea with Bob Fulmer?
A We, we went once, and then—
Q Wait a minute. Wait a minute. On that occasion, was it a Sunday?
A That was on a Sunday, one Sunday.

Q You remember you were looking for a bar and you ran into two police officers who said you can't get a drink in Chelsea on Sunday?

A Yes.

Q Did you tell either one of those police officers you did not want to remain on the farm?

A No, I did not say that.

Q How many times all together were you ever hit, that is physically touched, by Ike Kozminski?

A Well that was once on, on Easter. That was when I come home.

Q All right. Is that the time when you were, you wanted your ten dollars for Easter pay?

A Yeah, I want that there and—

Q Okay.

A And then he, he brang it on a Monday.

* * * * *

[104] Q Okay. When you were living in the trailer and there was no running water in the trailer—

A Yeah, I used, I used to carry water in jugs.

Q Right. And, also, couldn't you take a shower in the bunkhouse?

A Yeah, I used to take showers in the bunkhouse, yeah. That was Sundays.

Q On occasions Ike would get after you to take a shower, you did not like to take a shower but would he kind of say, well, Bob, excuse me,—"Louis, you know you should really take a shower," wouldn't he been after you to do that?

A Well, we had to take a shower once every Sunday and we was going to Stivers.

Q Yeah. Weren't there times during the week when you did not go to Stivers when Ike Kozminski would suggest to you that you should take a shower?

A Yeah.

Q As well as change clothes?

A Yeah, change clothes, yeah.

[105] Q Isn't it true that you kind of liked the clothes, I mean, they were ragged, but you were comfortable in them when you were working around cow manure and working and doing farm chores?

A Yeah.

Q All right. What did you have to eat when you were at the Kozminski's—let me ask it a little differently.

Do you remember on the big holidays, Christmas, Thanksgiving and Easter, where you had a dinner with the family in the big house?

A There was, once we had ham and one time we had chicken and turkey.

Q Well, you had that on every holiday, would you not, that is, every Easter, every Thanksgiving and every Christmas you had gone and had dinner with the family?

A Yes. That was at the house, yeah.

Q Now, when you were in the trailer, you and Bob fixed your own food, didn't you?

A Yeah, we fixed it in, in the skillet and there was an electric heater, that is what I picked up.

Q Did you have chickens on the farm?

A Yeah, we, that was in, that was in the chicken coop, yeah.

[106] Q Chickens laid eggs?

A Yeah.

Q And you had some of those eggs, didn't you?

A Sometime.

Q Okay. Now, we're talking about the trailer now, I'm not talking about when you were eating at the big house, but when you and Bob were together did you occasionally have chickens to eat?

A That was when we had it from the store.

Q Did you have ham?

A Yes, we had ham.

Q Did you have sausage?
A Yes, we had that.
Q Did you have bacon?
A Sometimes we had bacon and sometimes we didn't have none.
Q Lunchmeat?
A Lunchmeat, yeah.
Q Potatoes?
A Yeah.
Q Peaches?
A Yeah.
Q Pork and beans?
A Yes, that was in big cans.
Q Hot dogs?
[107] A Yes.
Q Do you know what pizza is?
A Yes.
Q Did you have pizza there?
A Yeah, it was in boxes.
Q Apple sauce?
A Yes, that was in jars.
Q Apple sauce and what else?
A In jars.
Q In jars, thank you.
A In jars.
Q Soup?
A Yeah, it was in cans.
Q Ice cream?
A Yes. We had ice cream there. That was, that was in a box.
Q How about bananas?
A Yeah, bananas.
Q Rolls?
A Yes.
Q How about doughnuts?
A Yes.

Q Pies?
A Yes.
Q Cereal?
[108] A Cereal.
Q Breakfast food?
A Yeah.
Q In a box?
A Yes, in a box, serial is.
Q Did you have milk from the cows on the farm?
A Yes. I used to take a little bottle of milk. That was from coffee jars.
Q And you would have coffee, wouldn't you?
A Yeah, we had coffee. We had—
Q Now, Mr. Molitoris—I'm sorry, Mr. Molitoris. Isn't it true that would get hungry about noon?
A Yes.
Q And isn't it true that you, on many occasions, would tell Mr. Kozminski when it was 12 o'clock, that no matter what you were doing you were going to stop and you were going to have lunch because you were hungry?
A Yes, and we didn't finish till two. One time we didn't finish, you know, till two o'clock.
Q Right.
A That was in, down to Schibley's farm. We was cleaning up down there.
Q Right. And that kind of made you mad, didn't it, that you weren't fed on time?

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[113] Q Isn't it true that you really didn't do a very good job of—in keeping the place in order, you and Bob, to be very honest about it?
A Well, it was, sometimes it was dirty and sometimes it was, it was, we—
Q Sometimes it was dirty and sometimes it was clean?
A It was clean. We swept it out a lot of times.

Q And you could also bring, when there wasn't any water in the trailer, you could bring water from the barn, couldn't you?

A Yeah, that was in five, five gallon jugs.

Q And isn't it true that in the barn there was an old wash machine where you could wash your clothes if you wanted to?

A Yeah, well, it worked once and it didn't work no more.

Q Have you ever heard of washing your clothes by hand, before we—in our modearn [*sic*] era had washing machines and all these other appliances, like they do when you're in the army?

A Well, I tried that once.

[114] Q You didn't do too well?

A I didn't wash too well with them. I hang them out on the fence.

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[CROSS EXAMINATION]

[116] BY MR. GOLDSTEIN:

Q Mr. Molitoris, before you went to the Kozminski's farm to live, before you were sleeping in the barber shop, you said you were sleeping in cardboard boxes and in refrigerators, is that right?

A Yes. That was down in the alley.

Q How long were you living like that, Mr. Molitoris?

A Oh, I used to live like that when I was in Ann Arbor here.

Q Have you ever heard the phrase: Someone is living on the street, or someone is a street person?

A Huh?

Q Have you ever heard that before, that someone is living in the street?

A No, I didn't.

Q Is that what you were doing, were you living in the street at that time, Mr. Molitoris?

A Yeah, that's when I couldn't find no rooms.

Q You had no regular place to live at that time, isn't that right?

A Yeah.

[117] Q How did you eat during that time, Mr. Molitoris?

A I used to eat in restaurants.

Q Where did you get the money?

A I went, I used to clean, clean some bars a lot of times in the mornings.

Q So you would have to find work wherever you could?

A Yeah.

Q You didn't have—

A There was some stores and—

Q You didn't have any kind of regular employment, any kind of regular job, you just found work wherever you could, is that right?

A No.

Q No, you didn't have a regular job?

A No.

Q Now, during that time, Mr. Molitoris, you said you were drinking wine, is that correct?

A That was on the roads a lot of times.

Q How often would you drink wine?

A Not every—

Q Every day?

A Not every day, no.

A Three or four times a week?

A No.

Q Is that because you couldn't afford it?

[118] A I couldn't afford it until I met One-eyed Charlie that time down to the jungle.

Q During that time, Mr. Molitoris, when you did have money, a few dollars because you swept out a bar or you cleaned out a store, would you spend some of that money to buy wine or to make wine?

A Oh, I bought, I bought wine a couple times.

Q Mr. Molitoris, during this time what would you do during the day when you didn't have work and when you had no place to live, what would you do during the day?

A Well, I was, I was living down in towards the jungle a lot of times.

Q You spent a lot of time doing nothing, basically, is that right, Mr. Molitoris?

A Yeah.

Q Now, after you went to the – I'm sorry, let me back up a minute.

At some point you met Mr. Kozminski, is that right.

A Yeah, I was at the the [*sic*] barber shop.

Q And he cut your hair?

A Yes.

Q He cut your hair more than once?

A Yeah.

[119] Q Did he also make you pay when he cut your hair?

A It was down at the barber shop, yes, and out the on the farm, no.

Q You are saying that every time he cut your hair in the barber shop he made you pay for it?

A Yes.

Q Now, during that time, though, you would talk to Mr. Kozminski and you told him that you were living in the streets, you were living in a refrigerator and you had no place to stay, is that right?

A Yeah.

Q And at first he offered to let you sleep in his shop, isn't that right?

A Yeah, I was sleeping behind, down in the basement.

Q He offered that to you, he let you do that, is that right?

A Once, yeah.

Q And then later he came to you and said, "Would you like to come and live on on the farm and work on the farm?"

A Yes.

Q And did you say, yes, you want wanted to do that?

A I, I had, I had my clothes back of the barber shop anyway, there, in the boxes.

Q And he offered you, he said to you, "Would you like [120] to come and live on the farm and work on the farm?"

A Yeah, that's –

Q And he told you that if you came with him he would give you a place to sleep and he would give you food and he would give you cigarettes, is that right?

A Yes.

Q Did you know when he was talking to you and he said this to you, that when you went out there you would have to work to get these things?

A Yeah.

Q So, basically, you understood what Mr. Kozminski was saying to you at that time, is that right?

A Yes.

Q And you chose to go with him, is that right?

A Yeah, I went.

Q Now, once you got out to the farm you started working very hard, didn't you?

A Yeah.

Q You had to get up early in the morning?

A Yeah.

Q And you had to work outside with Bob?

A Yes.

Q Take care of the cows and shovel the manure?

A Yeah, clean –

[121] Q That was hard work, wasn't it?
A Yes.
Q And you used to get very dirty?
A Yes.
Q Is that right?
A That is true.
Q And you used to get very tired?
A Yeah, I got, I got tired a lot.
Q Because you were working hard and there wasn't much time for you to loaf and do nothing, was there?
A That's right.
Q Had it been a long time—now, had it been a long time before—
A Yeah.
Q —before you went to the Kozminski farm since you had had a regular job, isn't that correct?
A Yes.
Q Even when you were cutting grass at the cemetery, that wasn't a hard job that you did all the time, that was only sometimes, isn't that right?
A Yeah, that's part-time.
Q Okay. So you were not used to working hard, were you?
A No, not too.
Q You weren't used to getting up every morning and [122] going outside and working hard and getting tired and getting dirty, were you, and you used to complain a lot about how hard you had to work, didn't you?
A Yes.
Q You used to complain to Bob every day that you didn't like working hard, isn't that correct?
A Yeah.
Q And you used to complain to Mr. Kozminski every day that you didn't like working hard, isn't that correct?
A Yes.

Q And you used to say every day to Mr. Kozminski and to Bob: "I don't like working hard, I'm going to leave," isn't that correct?
A That is right, I walked out.
Q You walked out several times, didn't you?
A Yes.
Q Mr. Molitoris, I don't remember if it was Mr. Barris or if it was the young lady that asked you today whether Ike Kozminski ever told you that you had to stay on the farm the rest of your life, but do you remember that question being asked of you?
A Yes, I was—
Q Do you recall whether Mr. Kozminski ever said to [123] you that after you were at the farm that you had to stay there the rest of your life, that you had to work there the rest of your life?
A No.
Q You don't remember him saying that to you?
A That was, that was when he said you, you're supposed to stay there all you life.
Q So you do recall Mr. Kozminski saying that to you.
On one occasion he said to you, "You're supposed to stay here the rest of your life," do you recall that?
A Yeah, that was in the barn there.
Q Do you recall telling someone that you didn't believe him?
A Yeah, it's, that was Bob.
Q Did you believe that Mr. Kozminski, when the one time he said to you that you have to stay here the rest of your life, did you believe him?
A That I was supposed to stay there all, all the rest of your life, that's what I heard.
Q Okay, that's what he said to you. The question I'm asking you, Mr. Molitoris, is did you believe him when he said that?
A No.

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[CROSS EXAMINATION]

[131] Q [Mr. Stringer]
Q Did you have a lot of cats?
A Calves?
Q Cats?
A Cats?
Q Yes?
A Yeah, we had about over 25.
Q Where did they live?
A Well, some of them lived at the, at the trailer, some of them was born in there.
Q Did each one have a name?
A Yeah, I named them.
Q You named them all, didn't you?
A Yeah.
Q Did the calves have names when they were born?
A Yeah, they, they had names too.
Q Would you give them the names?
A Yeah.

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[137] Q Did John ever rip your shirt?
A No, he didn't. He never ripped my shirt, no. He picked me up one time and slammed me against the wall.
Q He picked you up one time and slammed you against the wall?
A Yeah, it was in the barn.
Q Do you remember what happened?
A No, I, I said something. I don't, I don't know if I said anything, something.
Q Was Bob around?
A Yeah, Bob was, he was, he was in the stall there. He didn't say nothing.
Q Did you have a pitchfork?
A A pitchfork?
Q That time.

A A pitchfork?
Q Yes.
A No, that was a hoe.
Q You had a hoe?
A Yeah, I was scraping manure off.
Q Do you know why he threw you against the wall?
A No.

• • • • •

[140] Q Louis, why don't you try looking up. You're getting your head down a little bit too much again. There we go.
Is that what you did, you went back to the trailer and laid down?
A Yeah, I went to lay down, I changed clothes. Took my good clothes off and I put my regular clothes with the hat that I had on at that time and I didn't, I didn't go nowhere. I shut the door.
Q That day, anyway, you didn't go to Chelsea?
A Huh?
Q That day, anyway, you didn't go to Chelsea?
A I shut the door and I went back, to the back of the room and I lay down.
Q Louis, but that day you didn't go to Chelsea, is that right?
A Yes.
Q But you'd other occasions when you went to Chelsea, is that right?
A Yea. It was, that was occasionally when I, it was dark time when I went.
Q You would go visit visit Unk and Carl, right?
[141] A Carl.
Q Carl?
A Carl, yeah.
Q And Unk?
A Carl and Unk.
Q What would you do with Carl and Unk in Chelsea?

A Well, we–

THE COURT: Louis, get your head up.

A We went to the store. They went to the store and they bought, they brang some beer, beer and wine.

Q Where did they live in Chelsea?

A They live on Main Street, the place where it's, it's, a liquor place, a liquor place across the road.

Q How would you get to Unk and Carl's?

A I hitchhiked.

Q Would you also end up with a ride then by hitchhiking?

A Oh, yes. Sometimes I didn't get a ride and sometime I got, I come down, come down to Schibley's and I asked the boy if you could take me to Chelsea and I come back after I, I was done getting what I was going to buy down there.

Q I didn't quite catch that last answer?

A What I was going to buy down there.

[142] Q But would you stay with Unk and Carl for a while?

A Yeah, and then I walked, walked out. I went, I went up the road, up the road and I hitchhiked back home.

Q Do you know how many miles that's?

A That's about, that's five miles from there.

Q Five miles from the farm?

A Yeah.

Q All right. Did you stay stay overnight with Unk and Carl?

A One time, yeah.

Q For three nights?

A No.

Q Two nights?

A Two nights.

[Excerpts from the trial transcript: Volume VI]

[Testimony of Dr. Harley Stock]

[Direct Examination]

[78] Q [Ms. Morgan] Okay. Did you give a series of tests–let's take Mr. Fulmer's tests first. A series of tests to Mr. Fulmer to determine what his IQ was?

A Yes, I did?

Q And what test did you give him?

A I gave him the Wechsler Adult Intelligence Scale, [79] the revised form.

Q What were the results of that, or do you want to do all of it?

A Well, maybe I should explain what the test is.

Q Okay.

A The Wechsler Adult Intelligence Scale, revised form, is probably the most widely used test of IQ in the country today.

Revised form means that about three years ago a revision came out in which the test was reformed to take into account different culture, ethnic and sexual distribution based on population studies.

It has eleven sub-tests, eleven areas of intellectual functioning that it taps or evaluates. Those are broken down into two general areas. One is called verbal performance, and the verbal subsection, and the other is called a performance subsection. CONTINUE REVISIONS HERE

The first area we're going to talk about is the verbal subsection. The verbal subsection deals primarily with the individual's ability to learn in their environment, their capacity to make individual judgments and their understanding of what goes on around them. It's a reflection of [80] their educational achievement and attainment, and taps into how well they are capable of making independent decisions.

On this particualr score, on the verbal subsection test, Mr. Fulmer received an IQ of 64, so if we look at the curve

there we can see that two standard deviations below the mean is 70, and his score is below that.

I did some computations here and that places him approximately two and a third standard deviations below the average score. This is at the first percentile range.

Q What does that mean?

A What that means is that 99 people out of 100 of his chronological age who take this test score higher than he does, and in fact it would be more than that but you can't have more than 99 out of one hundred because it takes into account the fact that he took the test, so virtually almost everyone who takes the test scored higher than he did on that subsection.

The second subsection is the performance subsection, and this is a test of eye-hand coordination, spatial orientation, mechanical abilities. It also evaluates neurologic function [81] or brain damage.

On that he received an IQ score of 74, and that places him at one and two thirds standard deviations below the mean, slightly above minus two, and this is at the 95th percentile, or actually the fifth percentile, meaning that 95 people out of one hundred who take the test score higher than he did on this section.

What we do then is combine the two scores. We say, well, he did "X" on the verbal section, he did "Y" on the performance section. Let's combine them and give him what is called a full scale IQ so it will give us a better idea how he does in terms of his general, his general functioning, and his full scale W.A.I.S. IQ was 67.

Q W.A.I.S. is the Wechsler Adult Intelligence Scale?

A That's correct.

Q And it was 67?

A It was 67, and, again, it was between the first and second percentile, meaning, again, that 98 people out of hundred, generally speaking, who took both sections of the test scored higher than he did?

* * * * *

[82] Q For Mr. Molitoris, let's talk just about his Wechsler and in this we will talk about the other tests you give.

A Okay. Mr. Molitoris received a verbal IQ, the first part, of 61. This places him at the 0.4 percentile, which means that 99.6 percent, statistically, scored higher than he did. Remember, that is only a statistical number, so, obviously, it's 99 percent scored higher because you can't go any lower than that.

His Wechsler Adult Intelligence Scale performance IQ of 65 placed him at the first, exactly at the first percentile, which, again, is that exactly 99 out of one hundred scored higher. There are very, very low test scores. It's almost impossible to get a lower test score unless one is institutionalized.

His full scale IQ, we put the two of them together, of 60, places him, again, at the 0.4 [83] percentile range; 99.6 out of one hundred scored higher than he did statistically.

* * * * *

[97] Q Are there or are you familiar with any of the literature this says what people with this IQ level can do?

A Yes.

Q The Diagnostic and Statistical Manual of the American Psychiatric Association, the third edition, which is the current manual, the DSM-3, is what psychiatrists and psychologists use as sort of a cookbook to diagnosis people, and it's used for insurance purposes. It has certain code numbers attached to psychiatric problems, so that it gives you a standard reference manual.

The DSM-3 has a definition of mental retardation that we talked about; Subaverage, general intellectual functioning, impairment of adaptive behavior, onset before the age of 18, and different levels of retardation, and the first level it talks about are people between the IQ's of 50

and 70, where both of these gentlemen fall, and the DSM-3 says essentially that these people are [98] what used to be called—and some people still call them—educable mentally retarded. That means that as adults they can lead simple, independent lives, they have the capacity to function on their own. They have the ability to make independent decisions. They will need some mild amount of supervision, as opposed to individuals who are lower functioning, which are called trainable mentally retarded, who need constant supervision and who which will more than likely end up in an institution, and who have a difficult time living in the world. They need someone constantly monitoring their behavior.

Q You have mentioned the word concrete thinking. Can you tell us what that means and how that relates?

A Yeah. Well, there's all kinds of thinking that human beings go through, but the main way to look at it is concrete and abstract thinking.

For example, the proverbial people in glass houses shouldn't throw stones. There is an abstract way of looking at it and then there's a concrete way of looking at it. To say, well, if you throw a rock at a piece of glass it's going to break, instead of abstractly thinking of what it might mean to make disparaging remarks if you have [99] already committed a certain sin.

Mr. Molitoris and Mr. Fulmer approach things in a concrete manner. They don't have the ability to sort through logical choices and make abstract judgments.

If someone says to them that is the way it is, Louis, that is the way it is Bob, they accept that because they cannot conceptualize anything else, they don't have the wit to think through things.

Q Okay. What kind of—you mentioned they could lead semi-independent lives. What kind of jobs could they—

A I think both of them with that IQ and, again, consistent with people who I examined for disability who have

had this IQ level, could go into job environments that would be semi-structured, sheltered types of work shops. Some forms of industries are taking this type range of IQ in where they do only manual labor or that is explained to them. They don't have to make any independent decisions, but they can, if you show them a bus route three or four times they could get on a bus and go to work.

They can take care of their own personal [100] hygiene. They can distinguish between right or wrong so they will know not to engage in certain behaviors, and they would need some, they can cook their own meals if someone shows them how to do it. They need some moderate amount of supervision, but they can lead semi-independent lives.

Q Is there anything particular with an IQ of this level in reacting to stress or new situations?

A People in this type of IQ, with this type of IQ do very poorly in new situations. We know that stress for any of us, novel situations cause stress, and what we have to do in order for us to cope with stress is to go back in our mind and say, well, when I have been in similar situations in the past how have I coped with it, and then have the appropriate coping psychological mechanism.

With retarded people, first of all, they don't have the capacity to sort through things and, second of all, if they do, their mechanisms for coping are so weak that when under stressful situations they tend to withdraw, revert to a childlike mental state and became overly compiaint.

Q Do people who are at this level of intellectual functioning realize that they are mentally retarded?

[101] A It depends on the situation that they are in. If they are in a regular school, for example, as children, they often do because people pick on them, they make fun of them.

They often look much different than the average person because there is a mixture of this genetic biologic problem

going on, and so they do. However, if they are raised in an isolated or raised in the institution they may not realize it more, but most people in this level, at some level say, hey, I'm different than everyone else.

Q We have heard the term mental age versus chronological age, I'm sure we all have. Can you tell us what this means and how it relates to Mr. Fulmer and Mr. Molitoris?

A Well, our mental age should approximate our chronological age. In other words, if a person is 50 years old they should theoretically think as an average 50 year old would.

Both of them, Mr. Molitoris has a mental age of about seven, eight. Mr. Fulmer has a mental age of, perhaps, between eight and ten.

Q Does that mean that they really function as eight year olds and ten year olds?

A No. I mean they couldn't, if you put them together [102] they don't want to play eight-year-old games, they don't want to play ten-year-old games. More in terms of their understanding the world, how they view things and their development.

Piaget and other have identified certain stages of cognative development, and these two have, I guess what you would call, an arrested cognative development. They are just not functioning anywhere close to an adult. They would not do good playing with seven year olds, but they view the world as a seven year old would in terms of thinking capacities.

Q Can you give us an example of this?

A Yes. If someone in authority said to them I want you to do this, an adult might say, well, let me see what my options are. I can choose to do it, I can choose to have someone else do it, I can choose to protest it. There may be another way we can negotiate for them. Because of their childlike state, if someone in authority tells them to do it

they are not going going to question it, they are going to pretty much do it.

Q This is not to say that they will always do it?

A That is not to say that they will always do it, but they are much more compliant than the normal adult.

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[CROSS EXAMINATION]

[147] Q [Mr. Goldstein] Dr. Stock, you quoted, for example, on page three of your letter Margarethe said, this is Bob Fulmer speaking:

> "Margarethe said that if I left the farm they'd put me back in the training school. I was there when I was really young and I was scared."

This is contained in your report, is that correct?

A Yes.

[Excerpts from trial transcript: Volume IX]

[Testimony of Emanuel Tenay]

[Direct Examination]

[207] Q Now, could you tell us your recollection, and if you need to refresh you are memory I think you can consult your report, as to what Mr. Fulmer told you on the occasion of the interview?

A Just relying on my memory, I would say that he was able to communicate rather freely. He was friendly, cooperative, and showed no evidence of any kind of overt psychiatric symptoms.

He indicated that through his life he's had difficulty, as far as learning is concerned; That he never learned how to read or write. He had difficulty in securing jobs that would lead—paying jobs. He described to me some difficulties he had.

As a youngster he came from a rather large family, I believe he was one of 13 children, and really throughout his life he was working on a farm where, by and large, he would not be paid or paid very little.

He described to me how he became involved with the Kozminskis. He worked on a different farm nearby and had—did not like it and as far as I could determine from my interview [208] with him, he did willingly come to the Kozminski farm. He did describe that in the, I believe, the 16 years that he was there, that the conditions were rather deplorable, that he was not given adequate food, that the living conditions were bad.

He stated that on one occasion he was hit by Ike. He refers to Mr. Kozminski as Ike. He in response to specific questions stated he had little to do with Mrs. Kozminski.

When questioned as to why he did not leave if he did not like it, he stated that he had noplace else to go. He was able to describe the work on the farm pretty well. He had good comprehension of what was going on. He told me about the coming and goings of various herdsman who stayed there usually, he said, less than a year.

So my impression, my overall impression, was that Mr. Fulmer was a person who was mildly to moderately mentally retarded; that in despite of it he was, however, able to function quite well socially, interact with other people. He related a variety of such things where he interacted with other persons where he attended various functions.

[Excerpts from trial transcript: Volume X]

[Testimony of Margarethe Kozminski]

[DIRECT EXAMINATION]

[9] Q [Mr. Goldstein] Did something happen that evening at seven with regard to a man named Bob?

A Yes. My husband came home and I told him, and he said, "Is that the man that would like to come and stay with us?"

Q And what did you do, or you and your husband do that evening?

A We got, we got dressed because it was a snow storm, and we went out and parked on the corner of Scio Church Road and Limeyon Road. And about eight o'clock, the tractor came and he stopped, and he said, "Drive down to the end of the road and wait for me," which we did. And then he came and said, "I got to go back and get my clothes—"

Q Who, now, is "he"?

A Bob Fulmer.

"I go and get my clothes," and I said, "It's not necessary." I said, "We buy you new clothes." He said, "But I got to go back because I still have my bankbook in the house." An . said, [10] "Well, when you are going also please let the people know that you are leaving so they are not worried about you." And he said, "I can't write," and then I volunteered and asked him if he would like me to write the note and he said, "Yes," and I asked him, "What do you want me to write?" And he said, "I'm leaving." And I said, "That's not really enough," I said, "At least tell him thank you."

Q Who actually wrote the note?

A I did.

Q Do you remember what the note said?

A Yes; word for word.

Q Would you tell us, please?

A Yes.

"Mr. and Mrs. Heller, thank you very much for what you did for me, but I found another place to live."

And then he signed it.

Q He actually signed it?

A He signed his name.

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[Testimony of Ike Kozminski]

[DIRECT EXAMINATION]

[101] Q [Mr. Barris] Now, did there come a time when you started milking the cows, as well as other people on the Peckins farm?

A Right, sir.

Q All right, and would you do that every day of the week or just some of the time?

A Well, I wasn't doing it every day of the week. I helped out and sometime did it every day of the week.

Q All right. When you were working as a barber, how were you able to milk the cows at the same time?

A When I was working as a barber I was holding three jobs for 20 years.

Q All right. What were those three jobs?

A I was cleaning apartments, painting apartments and renting apartments. I was a barber and I was cleaning, milking and cleaning manure from the cows.

Q What time during that period of time would you get up?

A I put in approximately between four and five hours sleep for the next 20 years.

Q Now, I'd like to go to the circumstances under which Mr. Louis Molitoris came, what were they?

A Mr. Molitoris, I had a barber shop essentially on [102] 117 East Washington in Ann Arbor, West Washington where it was just a building, and I moved my building from East Washington into West Washington.

Q Was that also a one chair barber shop?

A One chair barber shop.

Q All right. Go ahead.

A And there was a, the Arrow Hotel was next door to it and Louis Molitoris would occasionally stay at the hotel and he would occasionally pass by my barber shop and stop in and talk from time-to-time.

Q What was the physical condition, if any, you observed of Louis Molitoris when he would come to your barber shop?

A Of course, I observed the physical condition of Louis Molitoris in the winter time. When I got there he was already sitting in the front of my door, shaking like a leaf.

Q And what if anything did you do?

A I invited him in and I told him he can go down in the basement. I did not have a bed, but I put down a chair and I told him to sit in front of the furnace and warm up.

Q Did he ever sleep in your barber shop?

A Only in the daytime.

Q Was there some reason why you didn't let him stay [103] by himself?

A He was a chain smoker and he was drinking wine, and I didn't want him to set the building on fire.

Q Did you on occasion do his hair?

A Yes, I did.

Q And did there come a time when there was a discussion between you and Louis Molitoris about his coming to the farm on Peckings Road?

A Yes, there was.

Q All right. As best you can recall, when did this discussion take place?

A Twelves years ago, approximately.

Q And where did it take place?

A Took place in my barber shop.

Q What was said by him and what was said by you on this occasion, as best you recall?

A Well, prior to this a number of business people in the area urged me and you know, talked to me and we discussed it mutually how to help this individual.

Q And what happened then?

A So I told him to ask me to take him out to the farm and I took him out and I say I will try him, whether this is

the right surrounding for him or whether it's the right place for him to be, and I took him out to the farm on three, four different [104] occasions, and I brought him back to town.

Q Did ultimately you and Mr. Molitoris have a discussion concerning him moving out permanently to the farm?

A Yes, sir.

Q All right. Did he move out there of his free will or did you force him?

A He moved out on his free will, sir.

Q Did you put a .357 to his head or anything like that to make him go out there?

A No, sir.

Q And did he move in immediately with Mr. Fulmer?

A Yes, sir.

Q And where did they initially live?

A In the trailer.

* * * * *

[129] Q Now, around Christmas time and Easter and Thanksgiving, would you also give these men some money?

A Yes, I did.

Q And did you consider that to be wages or a gift?

A Just a gift.

Q Do you have a knowledge as to whether or not these men in fact gave some gifts—do you have any grandchildren, incidentally?

A Yes, I do.

Q Do you have a personal knowledge as to whether either of these two men had some kind of a, appropriate, proper relationship with your grandchildren?

A Very much so.

Q Do you have a personal knowledge as to whether they in fact had enough money to give some minor gifts to these kids?

A Yes, they did.

[130] Q Is it Rose, are these Rose's children?

A Yes, sir.

Q I take it neither—is John married?

A John is not married, and Mike is not married.

Q And how many grandchildren?

A Four.

Q All from Rose and Mr. Lansky?

A Why yes, sir.

Q And have they been out on the farm?

A Steadily.

Q And do you know their age range?

A Of course.

Q Oldest?

A The oldest is 13 years old and the youngest is eight years old.

Q Thank you. Were there occasions when these individuals, to your knowledge, at least headed out for, with your absolute knowledge, for the local yearly fair, country fair?

A Yes, I do.

Q All right, and where was that country fair held?

A It's held on M-52 and old US-12.

Q Is that near Chelsea?

A It's outside Chelsea.

Q And how did these men, if you know, get to the [131] fair?

A I took them.

Q And did you stay with these men?

A No, sir.

Q And would you prearrange meeting them?

A I said I will be there sometime between 10:30 and 11 o'clock or whatever.

Q All right, and what time did you drop them off generally?

A Right around six o'clock.

Q So that would be, what, four, four and a half hours?

A Something like that.

Q Was anybody policing them to your knowledge, that's you, your wife, your son or anybody else?

A No, sir.

Q All right. Were there any other things, well, let me ask you this: Can you attest or not to the fact that when these men had birthdays, birthday parties were given for them?

A Of course.

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[135] Q With respect to Bob, was there any expenditure of money by you with relation to his teeth problem?

A Approximately $500.00 dollars.

Q Was that to a local dentist?

A Paul Parker. I had took him there. I had his teeth pulled. I took him back. I took him back for finishing and they or four times adjustments and then he finally got the teeth, I took him back home.

Q When Bob Fulmer's mother died, did he leave the farm?

A Yes, sir.

Q Did he advise you or, if he didn't, how did you learn that his mother had passed away?

A I don't remember a hundred and ten percent, but I'm pretty sure that there was a call that his mom died.

I took him to his mother and sister's previously on a number of occasions.

Q Where did his mother and sister live?

A In Flat Rock.

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[Testimony of Claude Fulmer]

[DIRECT EXAMINATION]

[206] Q [Ms. King] Did you have a conversation with Mrs. Kozminski?

A I definitely did.

Q And what was that conversation?

A Well, I told her I had a week off and I'd like to come out and see my brother, see how he was doing, and she stated that she'd rather not have me come out there because any time somebody come out, he got awful upset and they couldn't do nothing with him for two or or three weeks.

Q And did you go to visit him after that telephone conversation?

A I didn't, under those circumstances I didn't feel it was necessary.

[Excerpts from the Jury Instructions: Volume XI]

[127] [Court] The following instructions apply to Counts II and III of the Indictment. Count III of the Indictment reads as follows:

That from on or about December 1980 to on or about August, 1983, in the Eastern District of Michigan, Southern Division, Ike Kozminski, Margarethe Kozminski, John Kozminski and Mike Jay Assam, defendants herein, aiding and abetting each other, did knowingly and willfully hold Robert Arthur Fulmer to involuntary servitude by preventing him from leaving the employment and control of Ike and Margarethe Kozminski; in violation of Title 18, United States Code, Sections 1584 and 2.

Count III of the Indictment reads as follows:

That from on or about December, 1980 to on or about August, 1983, in the Eastern District of Michigan, Southern Division, Ike Kozminski, Margarethe Kozminski, John Kozminski and Mike Jay Assam, defendants

herein, aiding and abetting each other, did knowingly and willfully hold Louis Molitoris to involuntary servitude by preventing him from leaving the employment and control of Ike and Margarethe Kozminski; in violation of Title 18, [128] United States Code, Sections 1584 and 2.

Each of the defendants have plead not guilty to each of those counts.

Counts II and II of this Indictment charge the defendants with violating Section 1584 of Title 18 of the United States Code which prohobits [*sic*] involuntary servitude.

Section 1584 of Title 18 of the United States Code provides in pertinent part:

"Whoever knowingly and willfully holds to involuntary servitude . . ., any other person for any term. . . (shall be guilty of an offense against the United States).

This statute was passed by Congress to give effect to the Thirteenth Amendment of the United States Constitution which abolished slavery and involuntary servitude throughout the United States, except as punished for crime.

Involuntary servitude is forbidden wherever or however attempted within the jurisdiction of our national Government, in whatever form it may be found to exist.

Section 2 of Title 18 of the United States Code reads in part as follows:

[129] "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

In order to find a particular defendant guilty as charged in Counts II and III of the Indictment, the government must prove beyond a reasonable doubt each of the following elements as to Robert Fulmer for Count II and as to Louis Molitoris for Count III:

1. That a particular defendant held or aided and abbetted in the holding of Robert Fulmer under Count II or

Louis Molitoris under Count III to involuntary servitude for a term.

2. That the act or acts of the defendants were done knowingly or willfully.

If you find that the government has proved the above two elements as to a particular defendant and as to a particular count beyond a reasonable doubt, then your verdict will be guilty as to the count and that defendant.

If, however, you find that the government has failed to prove either or both of the elements set forth above as to a particular [130] defendant and as to a particular count, then your verdict will be not guilty as to that defendant and that count.

As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every element essential to the crime charged; the law never imposes upon the defendant in a criminal case the burden or duty of calling any witnesses or of producing any evidence.

A person who willfully aids and abets another in the commission of an offense is punishable as a principal.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as in something he wishes to bring about; that is to say, that he willfully seeks by some act of omission to make the criminal venture succeed.

You, of course, may not find a defendant guilty as to a particular count unless you find beyond a reasonable doubt that every element of the particular offense as defined in these instructions was committed by some person or persons, and that that defendant participated in its commission.

[131] The government is not required to prove that a defendant personally committed the offense charged. Rather, the government bears the burden of showing (1) that every element of a particular offense as defined in

these instructions was committed by some person or persons and (2) that a defendant (a) was that person or one of those persons, or (b) aided and abetted that person or those persons in the commission of the offense.

Involuntary servitude consists of two terms.

Involuntary means "done contrary to or without choice"—"compuslory"—"not subject to control of the will".

Servitude means "A condition in which a person lacks liberty especially to determine one's course of action or way of life."—"slavery"—"the state of being subject to a master."

Involuntary servitude involves a condition of having some of the incidents of slavery.

It may include situations in which persons are forced to return to employment by law.

It may also include persons who are physically restrained by guards from leaving [132] employment.

It may also include situations involving either physical and other coercion, or a combination thereof, used to detain persons in employment.

It may include situations in which the coercive acts or words cause persons in employment to believe they cannot freely leave employment if the acts are done or the words spoken with the intent to cause this result.

In other words, based on all the evidence it will be for you to determine if there was a means of compulsion used, sufficient in kind and degree, to subject a person having the same general station in life as the alleged victims to believe they had no reasonable means of escape and no choice except to remain in the service of the employer. In this respect you are instructed that you may find that not all persons are of like courage and firmness. You may consider the character and condition of life of the parties, the relative inferiority or inequality between the persons who perform the service and the persons exercising the force or

influence to compel its performance and the defendants' knowledge of these [133] matters.

The matter involves the knowledge and intent of the person charged as well as the character and understanding of the alleged victim.

It is not part of the Government's burden of proof, in order for you to return a verdict of guilty, to show that an alleged victim named in the Indictment made an attempt to escape. You may, however, consider any evidence of escape attempts as well as the opportunities to leave and the voluntary remaining or returning as bearing upon the voluntariness of the person's labor.

In determining whether the service was involuntary, you are instructed that it makes no difference whether or not the persons alleged to have been held in involuntary servitude initially agreed voluntarily to work. If a person desires to withdraw, and then is forced to remain and perform services against his will, his service is involuntary.

In the same sense, the failure to pay a person who voluntarily performs labor does not transform that labor into an "involuntary servitude.".

Of course, an employer can use any [134] legitimate means to retain the services of an empoyee [*sic*], such as offering the employee benefits, or seeking to convince the employee that he would be better off if he continued in his employment.

Payment of wages to the alleged victims or the conferring of other benefits on them is of course a proper means of attempting to retain their services. You should take evidence of such payment or benefits into account in your determination of whether or not the imporper [*sic*] conduct of a particular defendant, if you find such improper conduct to have occurred, was a necessary cause of the decision of one or both of the alleged victims to remain on the farm. However, the fact that the alleged victims were paid or

were given other benefits does not necessarily mean that they were not held in involuntary servitude.

As I have instructed you, you must consider all of the factors that might have influenced the decision of both of the alleged victims to remain on the farm. The desire to receive wages and benefits may have been one such factor. However, you must still determine whether or not the improper conduct of a defendant, if any, was a necessary cause of the decision of one or [135] both of the alleged victims to remain.

In order to find that a particular defendant is guilty of holding one or both of the alleged victims in involuntary servitude, in addition to the necessary coercion and intention on the part of the defendants, you must find that those means were an actual and necessary cause of the decision of one or both of the alleged vicitims to continue working for the Kozminskis. In other words, you must determine if one or both of the alleged victims would have left the employment if they had not been subjected to improper conduct on the part of that particular defendant.

In determing whether or not the improper means was a necessary cause of the decision of the alleged victim to continue working for the Kozminskis, you must evaluate all of the factors that might have affected that decision, including any legitimate means used by that defendant to convince the alleged victim to retain the employment. After considering all of the factors that might have affected that decision, you must decide whether or not the decision of either or both of the alleged victims to remain on the farm would have been made if improper means had not been [136] used by a particular defendant.

If you determine that either or both of the alleged victims would have continued to work for the Kozminskis regardless of the use of improper means by that particular defendant then you must find that the improper conduct

of that defendant was not a necessary cause of the decision of both victims to retain their employment.

In making the determination involving involuntary servitude, you may consider all of the evidence in this case to determine if a particular defendant held or aided and abetted in the holding of either Louis Molitoris or Robert Arthur Fulmer to involuntary servitude.

I caution you again as I have before, however, the defendants are not on trial for failure to comply with minimum wage laws, or for violating certain social regulations or for assault or battery or for using bad language in a coercive way. Neither are they on trial for neglect, for misappropriation of money, or for breach of an employment contract. Your attention must be directed to the discrete charge outlined in these instructions.

You will note that Element One requires [137] proof that the victim was held "for a term," that is, a period of time. In that respect, I instruct you that it is not necessary for the Government to prove any given specific term of an appreciable length of time. If the person was held for any term, regardless of how short such term may be, it would come within the "held for a term" provisions of the statute.

Element Two requires that the acts of the defendants were done knowingly and willfully.

An act, ommission [*sic*], or failure to act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason.

The word "knowingly" is used to insure that no one will be convicted for an act done because of mistake, or accident, or other innocent reason.

An act, ommission [*sic*], or failure to act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

You will note that to act knowlingly [*sic*] requires that the act be done intentionally. The [138] crimes charged require proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent the government must prove that the defendant knowingly did an act which the law forbids, or knowingly failed to do an act which the law requires, purposely intending to violate the law.

Such intent may be determined from all the facts and circumstances surrounding the case. Specific intent must be proved beyond a reasonable doubt before there can be a conviction.

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind. But, you may infer the defendant's intent from the surrounding circumstances.

You may consider any statement made by the defendant, and all other facts and circumstances in evidence which indicate the state of mind. You may consider it reasonable to draw the inference and find that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

[139] As I have said, it is entirely up to you to decide what facts to find from the evidence.

You will note that the Indictment charges that the offense was committed "on or about" a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes, beyond a reasonable doubt, that the offense was committed on a date reasonably near the date alleged.

That is the end of the instructions relating to Counts II and III of the Indictment.

The following instructions relate to Count I of the Indictment.

Count I of the Indictment reads as follows:

The Grand Jury Charges:

That from on or about 1967 to on or about August 1983, in the Eastern District of Michigan, Southern Division, Ike Kozminski, Margarethe Kozminski, John Kozminski and Mike Jay Assam, defendants herein, did conspire, combine, confederate and agree together and with other persons known and unknown to the Grand Jury to injure, oppress, threaten and intimidate citizens [140] of the United States, namely Robert Arthur Fulmer and Louis Molitoris, in the free exercise and enjoyment of the right and privilege secured to them by the Constitution and laws of the United States to be free from involuntary servitude as provided by the Thirteenth Amendment of the United States Constitution.

It was part of the plan and purpose of the conspiracy that Ike Kozminski, Margarethe Kozminski, John Kozminski and Mike Jay Assam would compel the unpaid labor and services of Robert Arthur Fulmer and Louis Molitoris at the Kozminski farm in Washtenaw County, Michigan, in the Eastern District of Michigan, by threats, assaults and beatings, by fear and intimidation and by forcing then to live and work in unsafe and unhealthy conditions.

It was further part of said conspiracy that Ike Kozminski, Margarethe Kozminski, and John Kozminski would threaten Robert Arthur Fulmer and Louis Molitoris with incarcertion by state authorities.

It was further part of the conspiracy that Ike Kosminski and Margarethe Kozminski, erroneously held themselves out as the [141] legal guardians of Fulmer and Molitoris and denied professional medical and dental care to Fulmer and Molitoris.

OVERT ACTS

In furtherance of the consipracy and to accomplish the objects thereof the defendants at the times annd [*sic*]

places set forth did commit the following overt acts, among others, within the Eastern District of Michigan:

1. On or about 1967 Margarethe Kozminski took Robert Arthur Fulmer from a farm in Chelsea, Michigan to the Kozminski farm in Stockbridge, Michigan.

2. On or about 1972, Ike Kozminski asked Louis Molitoris to come to work on the Kozminski farm.

3. On or about May, 1975 Margarethe Kozminski told a neighbor that Ike Kozminski had been given legal custody of Robert Fulmer and Louis Molitoris.

4. On or about December 3, 1980, John Kozminski told a farm supplier that Robert Fulmer and Louis Molitoris were wards of the state and that any statement they made should be ignored.

[142] 5. On or about January, 1981, Ike Kozminski, Margarethe Kozminski and John Kozminski misrepresented the living and working conditions of Robert Fulmer and Louis Molitoris to an employee of the Department of Social Services Adult Protection Division.

6. Beginning on or about March, 1981, and continuing to June, 1983, Ike Kozminski and Margarethe Kozminski returned Louis Molitoris and Robert Fulmer to the Kozminski farm on several occasions after they had run away.

7. On or about July, 1982, Ike Kozminski and Margarethe Kozminski denied professional medical treatment to Louis Molitoris after he was struck and gored by a bull.

8. On or about September, 1982, Ike Kozminski and Margarethe Kozminski denied professional medical treatment to Robert Fulmer after his thumb was severed in a farm accident.

9. On or about September, 1982, Mike Jay Assam, an employee of Ike Kozminski, threatened and chased Louis Molitoris with a pitchfork because of his failure to work as directed.

10. Beginning on or about February, 1983, and continuing to August, 1983, Mike Jay [143] Assam told Louis Molitoris that he could not leave the Kozminski farm.

11. Beginning on or about February, 1983 and continuing to August 1983, Mike Jay Assam returned Louis Molitoris to the Kozminski farm after Molitoris had run away.

12. Beginning on or February, 1983 and continuing to July, 1983, Mike Jay Assam beat and assaulted Robert Fulmer and Louis Molitoris.

13. On or about May, 1983, Ike Kozminski beat and assaulted Louis Molitoris in order to compel his labor.

14. On or about August, 1983, Ike Kozminski told a new employee that the employee should do anything necessary to get Robert Fulmer and Louis Molitoris to work, including beating them, and that the employee should not believe anything Fulmer and Molitoris said.

All in violation of Title 18, United States Code, Section 241.

Each of the defendants has plead not guilty to this count.

The defendants in this case are charged in Count I of the Indictment with having violated [144] Section 241 of Title 18, United States Code, a statute enacted many years ago to help secure the rights guaranteed by the Constitution and laws of the United States.

The words of this statute that are pertinent to this case read as follows:

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise of enjoyment of any right or privilege secured to him by the constitution or laws of the United States. . . [they shall be guilty of a crime against the United States]."

In order to prove a particular defendant guilty of Count I of the Indictment, the government must prove beyond a reasonable doubt each of the following elements:

First: Two or more persons including a particular defendant consipred [*sic*], that is, there must be a conspiracy including a particular defendant.

Second: The purpose of their conspiracy must be to injure, oppress, threaten or intimidate one or more persons.

Third: One or more of the intended [145] victims must be a citizen of the United States.

Fourth: The conspiracy must be directed at the free exercise or enjoyment by such a United States citizen of a right or privilege secured by the Constitution or laws of the United States to be free from involuntary servitude.

Fifth: That one of the conspirators knowingly committed an overt act in furtherance of some object or purpose of the conspiracy as charged.

If you find that the government has proved that these five elements have been established beyond a reasonable doubt as to a particular defendant, you will find that defendant guilty of Count I of the Indictment. If, however, one or more of the elements has not been established beyond a reasonable doubt as to a particular defendant you will find that defendant not guilty of Count I of the indictment.

As stated before, the burden is always upon the government to prove beyond a reasonable doubt every element essential to the crime charged; the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or of producing any evidence.

[146] The first element of this offense requires proof of the existence of a conspiracy. A conspiracy is a combination of two or more persons to accomplish some unlawful purpose, or to accomplish a lawful purpose by unlawful means. Thus, a conspiracy might be called a kind of partnership for criminal purposes in which each member becomes the agent of every other member. The gist of the offense is the combination or agreement to violate or disregard the law.

Mere similarity of conduct among various persons and the fact that they have associated with each other, and they have assembled together and discussed common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence need not show that the members of an alleged conspiracy entered into any express or formal agreement or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be achieved. Ordinarily only the results of a conspiracy rather than the agreement are observable.

[147] Proof of a consiparacy [*sic*] is almost always a matter of inference deduced from the acts of the persons accused which are done in pursuance of an apparent criminal purpose. If the evidence establishes beyond a reasonable doubt that two or more persons did pursue by their acts the same object by the same or similar means, one performing one part of the act and the other another part of the act, so as to complete it with a view of attaining the object or objects they are pursuing, this is sufficient to constitute proof of a conspiracy.

In your consideration of the evidence in the case as to the offense of conspiracy charged, you should first determine whether or not the conspiracy existed, as alleged in the Indictment. If you conclude that the conspiracy did exist, you should next determine whether or not the accused willfully became a member of the conspiracy.

The extent of any defendant's participation is not determinative of that defendant's guilt or innocence. A defendant may be convicted as a conspirator even though that defendant may have played only a minor part in the conspiracy.

[148] One may become a member of a conspiracy without full knowledge of all the details of the conspiracy.

On the other hand, a person who has no knowledge of a conspircy [*sic*], but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before the jury may find a defendant, or any other person, has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the defendant, or other person who is claimed to have been a member, willfuly participated in the unlawful plan, with the intent to advance or further some object purpose of the conspiracy.

To act or participate willfuly means to act or participate voluntarily and intentionally, and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So, if a defendant, or any other person, with understanding or the unlawful character of a plan, knowingly encourages, advises or assists, for the [149] purpose of furthering the undertaking or scheme, that person thereby becomes a willful participant – a conspirator.

Count I of the Indictment charges a conspiracy among the defendants. A person cannot conspire with himself and therefore you cannot find a defendant guilty on Count I of the Indictment unless you find beyond reasonable doubt that that defendant participated in a conspiracy as charged, with at least one other person. With this qualification, you may find all the defendants guilty, one or two of the defendants guilty and the other not guilty, or all of the defendants not guilty, all in accordance with these instructions and the facts you find.

On a few occasions I have permitted you to hear testimony as to what one of the defendants said out of court at another time. When that statement is used to

show the truth of the facts asserted in the out of court statement, you should use and consider it only as to the case against that defendant. You shoult [*sic*] not consider it in determining the case against the other defendants.

In determing [*sic*] whether or not a defendant, or any other person, was a member of a conspiracy, [150] the jury members are not to consider that [*sic*] others may have done or said. That is to say, the membership of a defendant, or any other person, in a conspiracy must be established by evidence as to his own conduct, what he himself said or did, or what he himself failed to do or say.

Each defendant in this case is individually entitled to, and must recieve, your determination as to whether he or she was a memer [*sic*] of the alleged conspiracy. As to each defendant you must determine whether he or she was a conspirator by deciding whether he or she intentionally joined with any other or others to commit the crime of preventing the free exercise or enjoyment by a United States citizen of a right or privilege secured by the Constitution or the laws of the United States to be free from involuntary servitude.

The guilt or innocence of each defendant must be decided as if he or she were being tried separately. In conspiracy prosecutions it is often difficult for an individual defendant to make his or her case stand on its own merits because of the variety and amount of evidence which is received against the other defendants, often for limited [151] purposes.

Therefore it is not enough that you find a criminal agreement to commit the crime of preventing the free exercise or enjoyment by a United States citizen of a right or privilege secured by the Constitution or the laws of the United States to be free from involuntary servitude, if you do so find. You must also decide as to each defendant whether each of the elements of this conspiracy has been proven beyond a reasonable doubt as to him or her.

The second element of the offense is that the plan of the conspirator be to injure, oppress, threaten or intimidate one or more citizens of the United States. The words "injure," "oppress," "threaten" and "intimidate" are not used in any technical sense, but may cover a variety of conduct intended to harm, frighten or inhibit the free action of other persons. The words embrace whatever overcomes the will of the person against whom the alleged intimidation or oppression is directed and induces that person to do what he does not wish to do. To threaten or intimidate does not require a threat of physical force or the intimidation of physical fear.

[152] If a person is compelled to work involuntarily by force and threats of force, that conduct would constitute behavior which was injurious, oppressive, threatening or intimidating.

Thus, if it was a part of the plan of the conspiracy that such means as described in the Indictment be used in accomplishing its purpose, then the conspiracy was one to injure, oppress, threaten or intimidate within the meaning of the statute.

The third element of the offense is present if one or more of the individuals against whom the conspiracy ws [*sic*] directed ws [*sic*] a United States Citizen. Citizens of the United States include all persons born or naturalized in the United States, and subject to the jurisdiction thereof.

It is sufficient if the conspiracy was aimed at citizens whom the defendants knew may have been citizens.

If you find that the defendants, or any of them, agreed or conspired with one another or with any other person with the specific intent to deprive either Robet [*sic*] Fulmer or Louis Molitoris of their right to be free from involuntary servitude and slavery, then said conspiracy was directed at [153] the free exercise or enjoyment of a right secured by the Constitution and laws of the United States.

In order for this element of the offense to be complete, you must find that a defendant, if and when he or she formed or joined the conspiracy, did so with the intent that the alleged victims be deprived of their right to be free from involntary [*sic*] servitude and slavery. It is not necessary, however, for you to find the alleged conspirators, the defendants, were thinking in constitutional or legal terms in order to find that they had the purpose to interfere with a right secured by the Constitution or laws of the United States. It is only necessary that the alleged conspirators had a purpose to interfere with a right which is in fact protected or secured by the Constitution or laws of the United States as I have previouusly [*sic*] instructed you.

Furthermore, it is not necessary that the alleged conspirators knew that the rights they intended to interfere with were so secured, nor does the government have to prove that the sole purpose of the conspiracy was to interfere with the right as described in the Indictment.

It is, however, necessary that the [154] evidence establish beyond a reasonable doubt that it was part of the plan and purpose of the conspiracy that its members, in order to promote their objectives, would interfere with the rights as described and accorded to the alleged victims.

Therefore, if you find beyond a reasonable doubt that the defendatns [*sic*] agreed or conspired with one another with specific intent to deprive Robert Fulmer or Louis Molitoris of the right to be free from involuntary servitude and slavery, then the conspiracy was directed at the exercise or enjoyment of a right secured by the Constitution and laws of the United States, and the offense would be complete.

The law pertaining to "involuntary servitude" has been fully set out in connection with Counts II and III. You will consider the instructions on those counts in connection with your consideration of the fourth element of the conspiracy.

An "overt act" is any act knowingly committted [*sic*] by one of the conspirators, in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nautre [*sic*], if considered separately and apart form [*sic*] [155] the conspiracy. It may be as innocent as the act of a person walking across the street, or driving an automobile, or using a telephone. It must, however, be an act which follows and tends toward accomplishment of the plan or scheme, and must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the Indictment.

That is the end of the instructions relating to Count I.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves. You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence which tends to show whether a witness is worthy of belief.

Consider each witness' intelligence, motive and state of mind, and demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which the witness has testified, and whether the witness impresses you as having an accurate recollection of these matters.

Consider also any relation each witness may bear to either side of the case; the manner in * * *

In the Supreme Court of the United States

No. 86-2000

UNITED STATES, PETITIONER

v.

IKE KOZMINSKI, ET AL.

ORDER ALLOWING CERTIORARI. Filed October 13, 1987.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

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PETITIONER'S

BRIEF

(5)

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No. 86-2000

In the Supreme Court of the United States

OCTOBER TERM, 1987

UNITED STATES OF AMERICA, PETITIONER

v.

IKE KOZMINSKI, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

Whether "involuntary servitude," as prohibited and made criminal by the Thirteenth Amendment and 18 U.S.C. 241 and 1584, is present only where a person compels another to remain in his service through physical or legal coercion or, if the victim is a minor, an immigrant, or a mental incompetent, through fraud and deceit.

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Miscellaneous:

1 *Att'y Gen. Ann. Rep.* 11 (1907) 28
Brodie, *The Federally Secured Right to be Free From Bondage*, 40 Geo. L. J. 367 (1952) 27
Cohen, *Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, 42 J. Southern Hist. 31 (Feb.-Nov. 1976) 28
Cong. Globe, 38th Cong., 1st Sess. (1864) 16, 22, 23

Miscellaneous—Continued: Page

2 Cong. Rec. 2 (1873) 25
42 Cong. Rec. (1908):
p. 1114 26
p. 1115 ..... 26, 27
P. Daniel, *The Shadow of Slavery: Peonage in the South, 1901-1969* (1972) 28
Folsom, *A Slave Trade Law in a Contemporary Setting*, 29 Cornell L. Q. 203 (1943) 29
Galbreath, *The Ordinance of 1787, its Origin and Authorship*, 33 Ohio Archaeological & Hist. Q. 111 (1924) 23
Hamilton, *The Legislative and Judicial History of the Thirteenth Amendment*:
9 Nat'l B. J. 26 (Mar. 1951) 22
10 Nat'l B. J. 7 (Mar. 1952) 22
H.R. Rep. 152, 78th Cong., 2d Sess., Pt. 2 (1946) .. 28
H.R. Rep. 304, 80th Cong., 1st Sess. (1947) 28
Merriman, *The Legislative History of the Ordinance of 1787*, 5 Proc. Am. Antiquarian Soc'y 303 (1889) 23
Report of the President's Committee on Civil Rights (1947) 28
Revision of Federal Criminal Laws: Hearing on H.R. 5450 Before the House Comm. on Revision of the Laws, 78th Cong., 2d Sess. (1944) .. 29, 30
Revision of Titles 18 and 28 of the United States Code: Hearings on H.R. 1600 and H.R. 2055 Before the House Comm. on the Judiciary, 80th Cong., 1st Sess. (1947) 29, 30
C. Russell, *Report on Peonage* (1908) 28
Schmidt, *Principle and Prejudice: The Supreme Court and Race in the Progressive Era—Part 2: The Peonage Cases*, 82 Colum. L. Rev. 646 (1982) 20
S. Rep. 1620, 80th Cong., 2d Sess. (1948) 28
Staff of the House Comm. on Revision of the Laws, 78th Cong., 2d Sess., *Revision of Federal Criminal Laws: Preliminary Draft of Part 1—Crimes with Reviser's Notes* (Comm. Print 1944) 28-29

In the Supreme Court of the United States

OCTOBER TERM, 1987

No. 86-2000

UNITED STATES OF AMERICA, PETITIONER

v.

IKE KOZMINSKI, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the en banc court of appeals (Pet. App. 1a-71a), is reported at 821 F.2d 1186. The opinion of the three-judge panel of the court of appeals (Pet. App. 72a-106a) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 107a) was entered on April 16, 1987. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Thirteenth Amendment to the Constitution provides:

> Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
>
> Section 2. Congress shall have power to enforce this article by appropriate legislation.

18 U.S.C. 241 provides, in pertinent part, as follows:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; * * *
>
> * * * * *
>
> They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

18 U.S.C. 1584 provides as follows:

> Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

STATEMENT

Respondents Ike and Margarethe Kozminski and their son John Kozminski were convicted after a jury trial in the United States District Court for the Eastern District of Michigan on charges of conspiring to deprive two mentally retarded men of their Thirteenth Amendment right to be free from involuntary servitude, in violation of 18 U.S.C. 241. Ike and Margarethe Kozminski were also convicted of holding the two men to involuntary servitude, in violation of 18 U.S.C. 1584. John Kozminski was acquitted on that count. All three respondents were placed on probation for two years. In addition, Ike Kozminski was fined $20,000 and was ordered to pay $6,190.80 in restitution to each of the two victims. John Kozminski was fined $10,000.

1. The evidence at trial showed that in 1967 Margarethe Kozminski picked up Robert Fulmer while he was walking down the road and took him to work on the Kozminski family farm (Pet. App. 3a-4a; J.A. 92-93). At the time, Fulmer was working at another farm, and Mrs. Kozminski simply left a note telling Fulmer's former employer that Fulmer had gone (J.A. 93, 163). Mrs. Kozminski later told several people that she had kidnapped Fulmer (*id.* at 32, 88). Fulmer has an I.Q. of 67 (Pet. App. 3a). He lived in foster homes until he was eleven and spent some of his childhood at a training school (*ibid.*).

Louis Molitoris came to the Kozminski farm in the early 1970's (Pet. App. 4a). Molitoris had been living on the streets in Ann Arbor, Michigan, and had sometimes used the Kozminski barber shop in Ann

Arbor as a place to sleep (*ibid.*). At some point after they met, Ike Kozminski took Molitoris to work on his farm (*ibid.*; J.A. 96-97). Molitoris has an I.Q. of 60 (Pet. App. 3a) and was once institutionalized at a state mental hospital (J.A. 129).

Initially, the Kozminskis paid Fulmer $15 per week, plus room and board and clothing (J.A. 94). The pay was soon cut to $1 per week (*id.* at 96-97). Eventually, the Kozminskis eliminated regular pay entirely, and the only money the men received were gifts of $10 each on holidays and at the time of the county fair (*id.* at 97, 111-112).

Fulmer and Molitoris worked seven days a week, often from 3 a.m. until 8:30 p.m., and sometimes as late as 10 p.m. (J.A. 98, 102). A major part of their work was cleaning the cow manure out of the barn twice a day, since the machine used for that task was broken (*id.* at 42-43). The rest of the day they did odd jobs around the farm (*id.* at 99). The men were occasionally taken to a baseball game, and they were taken to the county fair once a year, but they never had a vacation (*id.* at 104, 118, 167).

From about 1980, the men were housed in a dilapidated, insect-infected trailer that had broken windows, no running water, no lights, and no heat (J.A. 37, 56). The two men slept on cots, with no sheets (*id.* at 41). The Kozminskis dressed the men in tattered clothes that were inadequate for warmth (Pet. App. 74a; J.A. 53); neighbors had to provide the men with gloves in the winter (J.A. 72). The men's clothing became filthy, and the only laundry equipment available to them was a broken washing machine in the barn (J.A. 39, 146).

While the Kozminskis once paid for some dental care for Fulmer (J.A. 125), both men were otherwise denied needed medical assistance (Pet. App. 74a). On one occasion, Fulmer cut off the tip of his thumb, and the Kozminskis would not let him go to the hospital (*ibid.*; J.A. 109-110). Molitoris was once gored by a bull and at another time kicked by a calf, but on both occasions the Kozminskis refused his request to see a doctor (J.A. 131-133). After his removal from the farm, Fulmer was found to be suffering from hypertension and arthritis (*id.* at 75). Molitoris was suffering from hypertension that damaged his heart muscle and several blood vessels in his eye (*id.* at 77). He had no teeth, scoliosis, an anotropic right testicle, and chronic obstructive pulmonary disease (*id.* at 77, 79). He was also substantially underweight, had peripheral nerve damage in his hands and feet, and had severe diarrhea—all resulting from deficiencies in his diet (*ibid.*).

The Kozminskis subjected Fulmer and Molitoris to physical and verbal abuse when they did not do their work as they were directed (Pet. App. 74a; see J.A. 37, 44, 52, 54-55, 70, 94, 105-106, 127, 152). In addition, the Kozminskis' herdsmen were instructed to hit Fulmer and Molitoris if necessary to get them to work (J.A. 37), and Molitoris was beaten nearly every day by one of the herdsmen (*id.* at 105).

The Kozminskis directed the men not to leave the farm (J.A. 110, 134). The Kozminskis also threatened to send the men to institutions if they did not do what they were told (Pet. App. 19a; J.A. 56-57, 108). While Fulmer did not mind living at the train-

ing school when he was young, he was afraid to go back there as an adult (J.A. 92, 108). Ike Kozminski told Molitoris that he had to spend the rest of his life on the farm, although Molitoris testified that he did not believe that (J.A. 151).[1]

The Kozminskis told the men not to talk to others and told others not to talk to them (Pet. App. 74a; J.A. 51, 69-70, 111). Once, when Fulmer used the phone to call a neighbor, Margarethe Kozminski ripped the phone from the wall and told him never to use it again (Pet. App. 5a; J.A. 109). On another occasion, the Kozminskis told Molitoris that a neighbor might shoot him (J.A. 63). To prevent others from interfering, the Kozminskis falsely told neighbors, farm hands, and visitors that the men were in their legal custody as wards of the state (Pet. App. 5a; J.A. 37, 66, 71).

The Kozminskis also discouraged relatives from contacting the men, and they discouraged the men from contacting their relatives (Pet. App. 74a). When Fulmer's sister called to arrange a visit, Margarethe told her that Fulmer would be upset by such a visit and that she should not come (J.A. 90). Margarethe made the same representation to Fulmer's brother (*id.* at 169). Fulmer once told Ike Kozminski that he would like to visit his brother and

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[1] Immediately after his release from the farm, Fulmer told a police officer that he did not believe that the Kozminskis would actually send him to the training school (J.A. 126). When he was no longer under the stress of the event, however, Fulmer told the government psychologist who examined him that he believed the threat and that it made him afraid to leave (*id.* at 161). Fulmer also testified at trial that the threat made him afraid to leave (*id.* at 108).

sister, and Ike replied that they did not care about him (Pet. App. 5a; J.A. 112). Shortly after Molitoris came to the farm, the Kozminskis had him burn the trunk containing all his possessions—including his family pictures—because, they claimed, the trunk had cockroaches (Pet. App. 5a; J.A. 136-137).

The men were not physically imprisoned or continuously guarded, and sometimes they left the farm for brief periods to visit neighbors or to go into town (Pet. App. 3a, 5a). Each time the men tried to run away, however, the Kozminskis or one of their employees went after them and brought them back (*id.* at 74a; J.A. 59-62, 134-135).

Once when they were away from the farm, Fulmer and Molitoris ran into a policeman, but they did not ask for help (J.A. 113-114, 142). As their circumstances deteriorated, however, Fulmer and Molitoris began to plead with people to help them leave the farm (Pet. App. 74a). Molitoris once begged someone who did business with the Kozminskis to call the police to take him away (J.A. 49). Fulmer told a neighbor that he had to get away from the Kozminskis because "'they are killing me'" (*id.* at 73). And Molitoris pleaded with a temporary resident of the farm to take him along when he left (*id.* at 87-88).

In August of 1983, a newly hired herdsman helped the men to leave the farm. While the Kozminskis were out of town, the herdsman notified county officials of the conditions under which the men lived (J.A. 38). When the sheriff and a social service employee came to the farm, Fulmer and Molitoris asked to be taken away before the Kozminskis returned (*id.* at 84-85). The men were then taken to an adult foster care home (*id.* at 85).

Expert testimony established that Fulmer and Molitoris view the world like children of between seven and ten years of age (J.A. 160). If someone in authority tells them to do something, they do not look at their options as an adult would (*id.* at 160-161). They are far more compliant, and they usually just do what they are told to do (*ibid.*). The Kozminskis were fully aware that the men had limited mental abilities (*id.* at 35).

2. At the close of the evidence, the district court instructed the jury concerning the meaning of the term "involuntary servitude." The same instructions applied to both the Section 1584 count and the Section 241 count for conspiring to deprive Fulmer and Molitoris of their Thirteenth Amendment rights (see Pet. App. 109a-112a; J.A. 171-176, 185). The court instructed the jury that it was "to determine if there was a means of compulsion used, sufficient in kind and degree, to subject a person having the same general station in life as the alleged victims to believe they had no reasonable means of escape and no choice except to remain in the service of the employer" (Pet. App. 110a). The court stated that involuntary servitude "may include situations in which * * * coercive acts or words cause persons in employment to believe they cannot freely leave employment if the acts are done or the words spoken with the intent to cause this result" (*id.* at 109a). The court cautioned the jury that "an employer can use any legitimate means to retain the services of an employee, such as offering the employee benefits, or seeking to convince the employee that he would be better off if he continued in his employment" (*id.* at 110a).

The court also instructed the jurors that in order to convict, they had to find that respondents' actions

were done "knowingly and willfully," and with specific intent to hold the victims to involuntary servitude (Pet. App. 112a-113a). Finally, the court instructed the jury that in addition to the necessary coercion and intention on the part of respondents, "you must find that those means were an actual and necessary cause of the decision of one or both of the alleged victims to continue working for [respondents]" (*id.* at 111a).

3. A three-judge panel of the court of appeals affirmed the convictions (Pet. App. 72a-106a). The court rejected respondents' claim that Section 1584 would be unconstitutionally vague if not limited to cases of physical or legal coercion (Pet. App. 77a-78a). Adopting the reasoning of the Ninth Circuit in *United States* v. *Mussry*, 726 F.2d 1448, 1454-1455, cert. denied, 469 U.S. 855 (1984), the court concluded that Section 1584's "mens rea requirement vitiated vagueness concerns" that might otherwise be presented by a broader construction of the statute (Pet. App. 79a).

4. On rehearing en banc, the court of appeals reversed (Pet. App. 1a-71a). The court agreed with the district court that "involuntary servitude" requires a showing that "the servant believes that he has no viable alternative but to perform service for the master" (*id.* at 12a). And the court agreed that there was sufficient evidence in this case for the jury to find that the victims believed they had "no viable alternative but to perform the labor in question" (*id.* at 15a). The court held, however, that the district court had improperly instructed the jury on the standard for proving involuntary servitude and remanded for a new trial. The en banc court concluded that a holding to involuntary servitude occurs only when (*id.* at 12a (footnote omitted)):

(a) the servant believes that he or she has no viable alternative but to perform service for the master (b) because of (1) the master's use or threatened use of physical force, or (2) the master's use or threatened use of state-imposed legal coercion (*i.e.*, peonage), or (3) the master's use of fraud or deceit to obtain or maintain services where the servant is a minor, an immigrant or one who is mentally incompetent.

In the court's view, the jury charge was too broad because it "would appear to criminalize general psychological coercion without fraud, deceit, force or legal coercion and would include all individuals within the covered class of victims subject to psychological coercion, not just the particularly vulnerable classes" (Pet. App. 14a). Finding sufficient evidence from which a jury could conclude that the victims were mentally incompetent and that the defendants practiced fraud and deceit in maintaining their services, the court remanded for a new trial on that limited ground (*id.* at 14a-15a).[2]

Five judges dissented (Pet. App. 50a-68a). They concluded that the court had constructed "an arbitrary definition [of involuntary servitude] that raises more questions than it answers" (*id.* at 51a).

[2] The court of appeals also held that the district court erred in admitting expert psychological testimony that the defendants had broken Fulmer and Molitoris of their will to leave by "involuntarily converting" them (Pet. App. 15a-17a). The court concluded that for such expert testimony to be admissible, it must conform to a generally accepted explanatory theory and that the testimony on involuntary conversion did not satisfy that requirement (*ibid.*). We have not sought review of that ruling. Thus, we acknowledge that this case must be remanded for a new trial; the issue before this Court is what definition of involuntary servitude shall apply on retrial.

The dissenters stated that the definition "not only unduly focuses on the means of accomplishing involuntary servitude, but also, at least as to its third prong, would define and *limit* the classes of persons to whom it applies" (*ibid.* (emphasis in original)). According to the dissenters, involuntary servitude occurs whenever " 'the subjugation of the will of the servant is so complete as to render him incapable of making a rational choice' " (*id.* at 52a, quoting *United States* v. *Shackney*, 333 F.2d 475, 488 (2d Cir. 1964) (Dimock, J., concurring)).[3]

SUMMARY OF ARGUMENT

The Thirteenth Amendment and 18 U.S.C. 1584 contain broad prohibitions against "involuntary servitude." The terms of the two provisions do not limit the prohibition to servitude that is imposed on particular groups of people or by particular methods. The court of appeals, however, held that "involuntary servitude," within the meaning of the Thirteenth Amendment and Section 1584, is limited to service that is obtained by either legal or physical force, except in the case of minors, incompetents, and immigrants, when it includes service obtained by fraud or deceit. That analysis is wrong for several reasons: it imposes an unwarranted restriction on the means by which the condition of involuntary servitude can be imposed; it recognizes three classes of persons who are entitled to special treatment, in spite of the absence of any textual support for such a distinction in the Thirteenth Amendment or Section

[3] The dissenters also concluded that the district court acted within its discretion in admitting the government's expert testimony on involuntary conversion (Pet. App. 53a-68a).

1584; and it ignores a common form of involuntary servitude, where the master subjugates the will of the servant by a variety of means to the point that the servant is deprived of the capacity to make any choice at all.

The broad and straightforward language of the Thirteenth Amendment and Section 1584 does not comport with the intricate and restrictive gloss embraced by the court of appeals. Contrary to the view of the court of appeals, we submit that the condition of involuntary servitude can arise from a variety of causes—not just legal or physical coercion.

The history of the Thirteenth Amendment and Section 1584 likewise does not support the restrictive construction adopted by the court of appeals. The Thirteenth Amendment was intended to be comprehensive in its scope and to help maintain "a system of completely free and voluntary labor throughout the United States." *Pollock* v. *Williams*, 322 U.S. 4, 17 (1944). Nothing in the history of the Thirteenth Amendment suggests that its ban on involuntary servitude was meant to be limited to involuntary labor obtained through physical or legal coercion.

Section 1584 was enacted in 1948. It was the product of the consolidation and extension of two predecessor statutes—the Slave Trade statute and the Padrone statute. Although both of those statutes were significantly narrower in certain respects than Section 1584, neither was confined in its language or purpose in the way that the court of appeals held Section 1584 should be. Both statutes were enacted out of concern about forms of involuntary labor performed by particularly vulnerable persons, but Congress did not limit the reach of either statute to any particular class of persons, nor did Congress limit

the kinds of coercion that it deemed to fall within the prohibition of those two statutes. Indeed, the background of the two statutes suggests that the victims about whom Congress was most concerned were persons whose involuntary labor was being obtained not by force, but by more subtle forms of coercion. Section 1584, which was based on the two predecessor statutes, thus cannot properly be read to be limited to legal and physical forms of coercion.

The elements of a Section 1584 or Thirteenth Amendment violation are as follows: (1) the victim must have worked for the defendant against his will; (2) the defendant must have specifically intended that result; and (3) the defendant's conduct must have been the cause of that outcome. Although the court of appeals expressed concern that in that form the statute would sweep too broadly, we submit that in fact the statute is quite limited in its reach. In order to prove that the victim is working for another against his will, the government must show either that the defendant physically restrained the victim or that he left the victim no choice but to remain. That is, the victim must have had no tolerable alternative, or must have been deprived altogether of his power to choose. In addition, the government must show that the defendant specifically intended to compel the victim to work against his will. Thus, in the case of a particularly vulnerable victim, the government must show that the defendant was aware of the victim's vulnerabilities and deliberately exploited them to compel the victim to continue in service. Finally, the government must show that the defendant's conduct was the cause of the victim's involuntary labor. Economic necessity or other social conditions that induce an employee to work contrary to his choice would not

constitute involuntary servitude within the meaning of Section 1584 or the Thirteenth Amendment.

Viewed in this fashion, the term "involuntary servitude" is sufficiently specific to satisfy constitutional standards, and it is sufficiently narrow to satisfy concerns that the term will be used to criminalize the driving of hard bargains in the employment context. A person who obtains service by forcing another to work against his will has ample notice of the unlawfulness of his conduct, regardless of the means he uses in achieving his aim.

ARGUMENT

THE MEANS BY WHICH A PERSON MAY UNLAWFULLY HOLD ANOTHER TO "INVOLUNTARY SERVITUDE" ARE NOT LIMITED TO PHYSICAL OR LEGAL COERCION

Involuntary servitude exists whenever the victim's service is compelled against his will. The term involuntary servitude refers to the victim's condition, not to the circumstances that led to it. In this case, as in most cases,[4] the victims' involuntary servitude

[4] Involuntary servitude is in most cases the product of a combination of coercive means, and not exclusively the result of physical and legal coercion, or even fraud and deceit. See, *e.g.*, *United States* v. *Warren*, 772 F.2d 827, 830-832 (11th Cir. 1985) (physical violence, no pay, placement in unfamiliar setting, verbal intimidation, induced dependency on alcohol), cert. denied, 475 U.S. 1022 (1986); *United States* v. *Mussry*, 726 F.2d 1448, 1450 (9th Cir.) (withholding passports, indebtedness, insubstantial pay, no vacation, isolation), cert. denied, 469 U.S. 855 (1984); *United States* v. *Harris*, 701 F.2d 1095, 1098 (4th Cir.) (physical violence, denial of medical assistance, withholding of wages), cert. denied, 463 U.S. 1214 (1983); *United States* v. *Booker*, 655 F.2d 562, 563-564 (4th Cir. 1981) (physical violence, verbal intimidation, withholding of wages).

was the product of a combination of measures. Respondents physically intimidated their victims, verbally abused them, subjected them to degrading and substandard living conditions, deprived them of needed medical care, kept them in poverty and under their control by denying them any pay,[5] directed them not to leave the farm and brought them back when they ran away, threatened to have them institutionalized if they failed to follow orders, isolated them from persons who might attempt to assist them, and dissuaded others by claiming (falsely) to be the legal guardians of the two workers. Although the court of appeals agreed that this evidence was sufficient for the jury to conclude "that the victims believed that they had no viable alternative but to perform the labor in question" (Pet. App. 15a), the court held, in effect, that most of this evidence was improperly before the jury because Section 1584 and the Thirteenth Amendment generally do not apply to forms of coercion other than legal or physical force. We submit that nothing in the language or relevant history of either law supports that result.

A. By Their Terms, The Thirteenth Amendment And Section 1584 Extend To Any Form Of Conduct That Compels A Person To Work For Another Against His Will

The Thirteenth Amendment proclaims that "involuntary servitude * * * shall [not] exist within the United States." Section 1584 expresses Congress's continuing commitment to that promise by making it unlawful to "knowingly and willfully

[5] Of course, neither the presence or absence of pay is conclusive as to the voluntariness of the worker's labor. See *Taylor* v. *Georgia*, 315 U.S. 25 (1942). The absence of pay, however, may effectively compel the victim to remain and be evidence of the defendant's intent to accomplish that result.

hold[] to involuntary servitude * * * any other person for any term." Except for the Thirteenth Amendment's obvious exclusion of criminal punishment, there are no words of limitation.[6] We submit that the straightforward prohibition against involuntary servitude extends to any conduct that is designed to compel a person to work for another against his will. Accordingly, we agree with the district court that the elements of a criminal violation of Section 1584 and the Thirteenth Amendment are: (1) the victim must be working for another against his will; (2) the defendant must have specifically intended that result; and (3) the defendant's conduct must have caused that outcome.[7]

The court of appeals, however, read the simple terms of the Thirteenth Amendment and Section 1584 to create a complex and sharply qualified formula. According to the court of appeals, a person

[6] Certain kinds of service have, of course, always been treated as falling outside the contemplation of the Thirteenth Amendment, such as "military and naval enlistments, or * * * the right of parents and guardians to the custody of their minor children." *Robertson* v. *Baldwin*, 165 U.S. 275, 282 (1897). See *Hurtado* v. *United States*, 410 U.S. 578, 589-590 n.11 (1973) (compulsory witness); *Selective Draft Law Cases*, 245 U.S. 366 (1918) (military draft); *Butler* v. *Perry*, 240 U.S. 328, 332-333 (1916) (state law requiring able-bodied males to do work on public roads); Cong. Globe, 38th Cong., 1st Sess. 1424 (1864) (remarks of Sen. Johnson); *id.* at 1437 (remarks of Sen. Harlan).

[7] Of course, respondents' conviction under 18 U.S.C. 241, for conspiring to deprive the two farm workers of their Thirteenth Amendment right to be free from involuntary servitude does not require a showing that the two workers were actually held to involuntary servitude. A conspiracy need not achieve its object to fall within the scope of the federal criminal prohibition. See *United States* v. *Feola*, 420 U.S. 671, 694 (1975).

is held to involuntary servitude only when the person's service is compelled by physical or legal coercion, unless he is a minor, an immigrant, or a mental incompetent, in which case he can be held to involuntary servitude if his service is compelled by fraud or deceit.[8] The decision of the Sixth Circuit is wrong for several reasons.

First, the court's limitation of the means by which one may hold another to involuntary servitude is groundless. Both the Thirteenth Amendment and Section 1584 condemn the intentional creation of a result: involuntary servitude. Neither prescribes the means by which that result is achieved.

It is certainly true that involuntary servitude can result from legal coercion, physical restraints, or threats of violence that restrain the victim by stating or implying that serious physical injury will result if the servant attempts to leave the master's service. But nothing in the Thirteenth Amendment or Section 1584 suggests that the kind of conduct that leads to involuntary servitude is limited to legal or physical coercion. In the absence of some textual basis for the distinction, it makes no sense to say that a threat of physical violence against the victim can give rise to a condition of involuntary servitude, but a threat of violence against the servant's relatives cannot. Likewise, if a threat of physical violence is enough to lead to a violation of Section 1584, surely the same must be true of a threat to burn down the servant's house or a threat to confiscate and

[8] As noted by the court of appeals (Pet. App. 2a n.3), respondents have not contended that the term "involuntary servitude" has a different meaning in the Thirteenth Amendment and Section 1584.

destroy all the servant's property. It is also difficult to explain why a direct physical threat may lead to involuntary servitude, but it is not enough for the master to use deceit to persuade the servant, falsely, that he will suffer grave physical consequences if he leaves the master's service.[9]

Second, there is no textual support for the court of appeals' special treatment of minors, incompetents, and immigrants. Nothing in the text of either the Thirteenth Amendment or Section 1584 suggests that certain coercive means can create involuntary servitude only in certain classes of victims. Nor is there anything in the text of either provision to suggest that the expansion of grounds for liability in such a case should be *limited* to fraud and deceit. The creation of a class comprised of minors, immigrants, and incompetents, for whom involuntary servitude may be established by proof of fraud or deceit, is a distinctly legislative-type judgment, and it is one

[9] In other settings, this Court and others have recognized that involuntariness can be provoked by coercive conditions other than physical force. To determine whether a victim has been kidnapped against his will, the Court considers whether there has been "unlawful physical or mental restraint" against the victim. See *Chatwin* v. *United States*, 326 U.S. 455, 461 (1946). Physical or legal coercion are not the exclusive means of compulsion. The issue is whether the defendant "willfully intended through force, fear, or deception to confine the [victim] against her desires" (326 U.S. at 460). Likewise, although the use of physical force is especially weighty evidence with regard to the voluntariness of a confession, a court must consider all the evidence of coercion, psychological as well as physical, in deciding the issue of voluntariness. "When a suspect speaks because he is overborne, it is immaterial whether he has been subjected to a physical or mental ordeal." *Watts* v. *Indiana*, 338 U.S. 49, 52 (1949) (opinion of Frankfurter, J.).

tnat has no footing in the language of either provision that is before the Court.[10]

Finally, and more fundamentally, the court of appeals mistakenly assumed that involuntary servitude results only when the master restrains the servant either physically or by threats that make known the severe consequences of leaving the master's service. Involuntary servitude, however, may also result from depriving the servant of the capacity for rational calculation. In that setting, the inquiry into wrongful subjugation focuses not on the offering of a choice the master has no right to present, but on the deliberate creation of conditions in which the servant is deprived of the capacity to choose at all. Physical abuse is no doubt an important cause of that state of mind in many, if not most, circumstances, but there is no logical reason why physical or legal coercion must be the sole cause. Indeed, the psychological nature of the process of subjugating a victim's will suggests the opposite conclusion. This kind of involuntary servitude demands judicial

[10] The facts of this case demonstrate the unsoundness of the court of appeals' standard. Although the two farm workers in this case are both mentally retarded and easily coerced, it is unclear that either would be considered legally incompetent. Under the court of appeals' standard, however, the jury could not consider whether fraud and deceit played a role in securing their continued service unless it were first determined that they were legally incompetent. And even then, the jury could consider only fraud and deceit, along with threats of physical violence, in determining whether the victims were coerced into remaining on the Kozminski farm. The jury would not be permitted to consider other conduct by respondents, no matter how much that conduct was intended to ensure the subjugation of the victims' wills, and no matter how successful that conduct was in achieving its purpose.

inquiry into matters other than mere physical and legal coercion.

Although this Court has not previously addressed the issue raised in this case, its prior decisions discussing the Thirteenth Amendment, and the anti-peonage law that was promulgated in the wake of the Thirteenth Amendment,[11] confirm that the plain meaning and "natural sense" (see *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 188 (1824)) of the term "involuntary servitude" are contrary to the court of appeals' restrictive gloss. This Court and others have repeatedly interpreted the language of the Thirteenth Amendment and its statutory progeny as broadly denouncing "a status or condition, irrespective of the manner or authority by which it is created." *Clyatt* v. *United States*, 197 U.S. 207, 216 (1905); see *United States* v. *Reynolds*, 235 U.S. 133, 144 (1914) (quoting *Clyatt* v. *United States*, 197 U.S. at 215) ("'peonage, however, created, is compulsory service, involuntary servitude'"); *Bernal* v. *United States*, 241 F. 339, 342 (5th Cir. 1917) ("The law takes no account of the * * * means of coercion."); *Pierce* v. *United States*, 146 F.2d 84, 86 (5th Cir. 1944) (same); *In re Peonage Charge*, 138 F. 686, 688 (N.D. Fla. 1905) ("This amendment denounces a state or condition irrespective of the manner or authority by which it is created."); *Peonage Cases*,

[11] Soon after passage of the Thirteenth Amendment, Congress enacted the Anti-Peonage Act, making it unlawful to "hold [ ] * * * any person * * * to a condition of peonage" (ch. 187, § 1, 14 Stat. 546). See generally, Schmidt, *Principle and Prejudice: The Supreme Court and Race in the Progressive Era—Part 2: The Peonage Cases*, 82 Colum. L. Rev. 646 (1982).

123 F. 671, 676 (M.D. Ala. 1903) ("The real vice * * * [is] the 'condition' it brought about."). Cf. *Bailey* v. *Alabama*, 219 U.S. 219, 242 (1911) (The law "is concerned with a fact, wherever it might exist; with a condition, however named and wherever it might be established, maintained, or enforced."); see also *id.* at 241 ("[T]he essence of involuntary servitude" is "that control by which the personal service of one man is disposed of or coerced for another's benefit.").

Unlike the court of appeals, moreover, this Court has expressly recognized the second type of involuntary servitude, which involves "'the state of entire subjection of one person to the will of another.'" *Hodges* v. *United States*, 203 U.S. 1, 17 (1906) (citation omitted). This type of involuntary servitude occurs not when the master compels the service against the victim's will by explicit or implicit threats that the victim is meant to comprehend, but instead, as the Court has described (*ibid.*), when the victim "has lost the power of resistance" and "surrenders himself to any power whatever" (*ibid.*). Cf. *Pollock* v. *Williams*, 322 U.S. 4, 18 (1944).[12]

[12] In *Bailey* v. *Alabama*, 219 U.S. at 244, the Court rejected the argument that peonage occurs only when "a man is kept by bodily compulsion against his will" (*id.* at 246 (Holmes, J., dissenting)). The Court recognized that the "'compulsion to such service by the fear of punishment under a criminal statute is more powerful than any guard which the employer could station'" (*id.* at 244 (citation omitted)). The same underlying rationale supports the rejection of the court of appeals' rigid claim that physical or legal coercion are the exclusive means of holding another to involuntary servitude. Other "fear[s]" may be "more powerful" coercive measures than either physical or legal coercion in a particular case. Indeed, the court of appeals conceded as much by ex-

B. The History Of The Thirteenth Amendment And Section 1584 Does Not Support The Court Of Appeals' Restrictive Interpretation

The court of appeals relied heavily on the historical background of the Thirteenth Amendment and Section 1584 to justify its narrow construction of those provisions. In fact, the historical background does not support that restrictive interpretation.

1. The immediate objective of the Thirteenth Amendment, of course, was the abolition of the system of African slavery.[13] But the framers of the Amendment had a larger purpose as well: to prevent the emergence of any form of compulsory labor. To accomplish that purpose, the framers deliberately borrowed the language of the Northwest Ordinance, which included a separate prohibition against involuntary servitude and which had previously been construed to prohibit forms of compulsory service other than classic slavery. See *Bailey* v. *Alabama*, 219 U.S. at 240-241; Cong. Globe, 38th Cong., 1st Sess. 1483-1490 (1864).[14]

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tending the scope of the inquiry to fraud and deceit, but then arbitrarily limited the relevance of that evidence to certain legal categories of persons.

[13] The historical background of the Thirteenth Amendment is discussed in detail in Hamilton, *The Legislative and Judicial History of the Thirteenth Amendment*, 9 Nat'l B. J. 26, 26-82 (Mar. 1951); and Hamilton, *The Legislative and Judicial History of the Thirteenth Amendment*, 10 Nat'l B. J. 7, 7-77 (Mar. 1952).

[14] Article VI of the Northwest Ordinance of 1787 provides that "[t]here shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes * * *." See, *e.g.*, *In re Clark*, 1 Blackf. 122 (Ind. 1821) (specific performance of a personal service contract

During the debates on the Thirteenth Amendment, Senator Sumner objected to the use of the language from the Northwest Ordinance, on the ground that while "slavery in our day is something distinct, perfectly well known, requiring no words of distinction outside of itself," the separate prohibition against involuntary servitude was superfluous and would "introduce a doubt" (Cong. Globe, 38th Cong., 1st Sess. 1487-1488 (1864)). Congress, however, was not persuaded. Supporters of the language of the Ordinance argued in favor of the use of a "clear, brief, and comprehensive clause" (*id.* at 1489 (remarks of Sen. Howard)). The supporters made clear that the Amendment was not intended to reach certain exceptional cases of involuntary service that had always been viewed as socially beneficial, such as the duty of a child to his parent and of the apprentice to his master. *Id.* at 1424 (remarks of Sen. Johnson); *id.* at 1437 (remarks of Sen. Harlan). With those narrow exceptions, however, the framers intended for the Amendment to have a "comprehensive" sweep (see note 6, *supra*).

The inclusion of the prohibition against involuntary servitude was significant. As explained by this Court soon after the Amendment's enactment, "[t]he word servitude is of larger meaning than slavery." *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 69 (1872). "[I]nvoluntary servitude was intended to

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violates the Ordinance). The origin of this language (including its authorship) has been the subject of considerable controversy. See generally, Galbreath, *The Ordinance of 1787, Its Origin and Authorship*, 33 Ohio Archaeological & Hist. Q. 111 (1924); Merriman, *The Legislative History of the Ordinance of 1787*, 5 Proc. Am. Antiquarian Soc'y 303 (1889).

cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results." *Butler* v. *Perry*, 240 U.S. 328, 332 (1916). Hence, "[t]he undoubted aim of the Thirteenth Amendment • • • was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States." *Pollock* v. *Williams*, 322 U.S. 4, 17 (1944); *Bailey* v. *Alabama*, 219 U.S. at 241 ("to make labor free"); *Civil Rights Cases*, 109 U.S. 3, 20 (1883) ("established universal freedom"). Moreover, the history of the Thirteenth Amendment offers no support for the court of appeals' creation of distinctions in its application to different categories of persons. Instead, as this Court has observed, the Amendment established "a charter of universal civil freedom for *all persons*, of whatever race, color or estate, under the flag" (*Bailey* v. *Alabama*, 219 U.S. at 240-241 (emphasis added); *Hodges* v. *United States*, 203 U.S. at 17 ("every individual"); *United States* v. *Rhodes*, 27 F. Cas. 785, 793 (C.C.D. Ky. 1866) (No. 16,151) ("everyone"); *In re Turner*, 24 F. Cas. 337 (C.C.D. Md. 1867) (No. 14,247) ("all persons")).

2. The legislative background to Section 1584 does not suggest that Congress intended that law to have a narrower scope than the Thirteenth Amendment. Rather, the statute was the culmination of Congress's effort to combat new forms of involuntary servitude as they arose and came to Congress's attention.

That effort began only two years after the adoption of the Thirteenth Amendment, when Congress passed the Anti-Peonage Act, making it unlawful to "hold[] • • • any person to a condition of peonage." Rev. Stat. § 5526 (1878 ed.). Peonage differed substantially from classic slavery. The peon voluntarily entered into the service of his master, the master advanced a sum of money, and the peon agreed to serve until the debt was repaid. *Peonage Cases*, 123 F. 671, 673-674 (M.D. Ala. 1903). This agreement was enforced not through physical force but through laws that required imprisonment or fines if the peon failed to honor his obligations (*id.* at 674). Despite the differences between peonage and classic slavery, Congress concluded that peonage was a form of involuntary servitude prohibited by the Thirteenth Amendment and sought to extinguish it.

In 1874, Congress concluded that further legislation was needed to enforce the Thirteenth Amendment. Prompted by reports that over 5,000 Italian children were being "held in something kindred to slavery" (2 Cong. Rec. 2 (1873) (statement of Sen. Summer)), Congress enacted the "Padrone statute," one of the two predecessors to Section 1584. That statute made it unlawful (1) to inveigle or kidnap any person from another country with the intent to hold that person to involuntary service; (2) to sell any such person into involuntary service; or (3) to hold any such person to involuntary service. Act of June 23, 1874, ch. 464, § 1, 18 Stat. 251.

The practice Congress sought to abolish was commonly known as the "padrone system." Under that system, padrones would go to Italy and pay parents to apprentice their children to them for a period of years. During their apprenticeships, the children would work for the padrones without pay as street musicians and beggars. *United States* v. *Ancarola*, 1 F. 676, 678-680 (C.C.S.D.N.Y. 1880). The padrones would entice the children to come by telling

them that they would be taught how to play musical instruments and that they would eventually prosper. Once here, without parents or relatives to turn to, the children had little choice but to submit to the demands of those who asserted authority over them. *Id.* at 683. Because of the immense psychological pressure on the children to remain with their masters, Congress concluded that the padrone system resulted in a form of involuntary servitude, even though the victims were not subjected to either legal or physical coercion. *Ibid.*

In 1909, Congress again decided that new legislation was necessary to enforce the Thirteenth Amendment, and it enacted the second of the two immediate predecessors to Section 1584. The 1909 Act was actually an amendment to the Slave Trade statute, an 1818 Act that had prohibited the practice of bringing blacks into this country to be held as slaves. Act of Apr. 20, 1818, ch. 91, § 6, 3 Stat. 452. Under the terms of the amendment, Congress made it unlawful to bring "any person" into the United States from another country as a slave or "to be held to service or labor," or to hold anyone brought into the country for that purpose. Act of Mar. 4, 1909, ch. 321, § 248, 35 Stat. 1139.

In explaining the purpose of the amendment, Senator Heyburn pointed out that although "the conditions that made [the earlier] legislation necessary have passed away * * * other conditions have arisen" (42 Cong. Rec. 1114 (1908)). In particular, he explained, the new statute was addressed to cases in which persons from Asia and Europe were brought to this country to work under contracts entered into on their behalf by others (*id.* at 1115). In response to arguments that such contracts are not

binding and cannot be specifically enforced, Senator Heyburn stated that the amendment was designed to protect those who come here "without being a party to the disposition of their services or the control of their rights, whether they be children of irresponsible years and conditions or whether they be people who, because of their environment or the condition of their lives, can not protect themselves" (*ibid.*). Thus, in the case of the Slave Trade statute, as in the case of the Padrone statute, Congress used the concept of involuntary servitude to protect persons who were subject to coercion because of their vulnerability, and not because of legal or physical force.

Section 1584 was enacted as part of the 1948 revision to the Criminal Code (see Act of June 25, 1948, ch. 645, 62 Stat. 773). Although it was based on the Slave Trade statute (18 U.S.C. (1940 ed.) 423) and the Padrone statute (see 18 U.S.C. (1940 ed.) 446), Section 1584 was significantly broader than either of its predecessors. Neither of those statutes made unlawful the mere holding of another to involuntary servitude; rather, each required that the person being held have been previously brought to this country from abroad or sold into involuntary servitude. See Brodie, *The Federally Secured Right To Be Free From Bondage*, 40 Geo. L. J. 367, 369 (1952).

The expansion of the scope of the new statute was no mere happenstance. Since the early 1900s, the Department of Justice had sought such an amendment in order to bolster the Department's effort to bring successful criminal prosecutions against coercive practices which resulted in involuntary servitude, but which fell outside the scope of federal peonage laws because they did not depend on claims

of indebtedness. See 1 *Att'y Gen. Ann. Rep.* 11, 207-208 (1907) [hereinafter *1907 Ann. Rep.*]; C. Russell, *Report on Peonage* (1908); see generally P. Daniel, *The Shadow of Slavery: Peonage in the South, 1901-1969* (1972); Cohen, *Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis*, 42 J. Southern Hist. 31 (Feb.-Nov. 1976). The Department recommended that "the definition of legal peonage be made broad enough to include the holding of persons in servitude whether in liquidation of an indebtedness 'or otherwise'" (*1907 Ann. Rep.* 207; C. Russell, *supra*, at 24-25). The first report of the President's Committee on Civil Rights, which was published in 1947, just before the enactment of Section 1584, made a similar strongly-worded proposal for legislation. The Committee recommended that Congress enact "a new criminal statute on involuntary servitude, supplementing Sections 443 and 444 of Title 18 of the United States Code" (*Report of the President's Committee on Civil Rights* 158 (1947)). According to the Report, the enactment "should make full exercise of congressional power under the Thirteenth Amendment by defining slavery and involuntary servitude broadly" (*ibid.*).

Congress's enactment of Section 1584 in 1948 had the effect of adopting those recommendations and putting them into effect. To be sure, none of the congressional reports or other materials accompanying the 1948 legislation comments on the change in the law made by Section 1584.[15] Nonetheless, the ex-

[15] See S. Rep. 1620, 80th Cong., 2d Sess. (1948); H.R. Rep. 304, 80th Cong., 1st Sess. A110 (1947); H.R. Rep. 152, 78th Cong., 2d Sess., Pt. 2, A101 (1946); Staff of the House Comm. on Revision of the Laws, 78th Cong., 2d Sess., *Revision of*

pansion of the scope of Section 1584 over that of its predecessors was obvious on its face, and clearly effected a broadening of the reach of the prior statutes.[16] In light of the familiar and longstanding

Federal Criminal Laws: Preliminary Draft of Part 1—Crimes with Reviser's Notes 320-321 (Comm. Print 1944); *Revision of Titles 18 and 28 of the United States Code: Hearings on H.R. 1600 and H.R. 2055 Before the House Comm. on the Judiciary*, 80th Cong., 1st Sess. (1947) [hereinafter *1947 House Hearings*]; *Revision of Federal Criminal Laws: Hearing on H.R. 5450 Before the House Comm. on Revision of the Laws*, 78th Cong., 2d Sess. (1944) [hereinafter *1944 House Hearing*].

[16] A contemporaneous court decision construing the term "involuntary servitude" illustrates the understanding of the term prevalent at the time of the 1948 enactment—an understanding that is consistent with the construction we propose here. In *United States* v. *Ingalls*, 73 F. Supp. 76 (S.D. Cal. 1947), the district court upheld a conviction under a related statute, 18 U.S.C. (1940 ed.) 443 (now 18 U.S.C. 1583), which prohibits the carrying away of another as a slave. See generally Folsom, *A Slave Trade Law in a Contemporary Setting*, 29 Cornell L.Q. 203 (1943). The *Ingalls* case involved facts strikingly like those present in this case. The court held that the term "slave" in the post-Civil War enactment should be equated with "involuntary servitude" and concluded that the facts of the case "compel the conclusion that the servant * * * was a person wholly subject to the will of [the] defendant; that she was one who had no freedom of action and whose person and services were wholly under the control of [the] defendant and who was in a state of enforced compulsory service to the defendant" (73 F. Supp. at 78). In *Ingalls*, as in this case, the involuntary servitude was the product of a combination of coercive methods, not merely physical and legal coercion. Like the two victims in this case, the victim in *Ingalls*: (a) was "forbidden to leave"; (b) "performed drudgery of the most menial and laborious type, without compensation"; (c) "had no days off from * * * work, no vacation"; (d) was provided living "quarters [that] were

Executive Branch recommendation to broaden the statutory prohibition against involuntary servitude, the 1948 change that produced Section 1584 is best seen as congressional adoption of that recommendation.[17]

In light of this legislative background, it is not surprising that every court of appeals but one[18] has read Section 1584 more broadly than the Sixth Circuit in this case. Those decisions support our view that physical or legal coercion are not the exclusive means of holding another to involuntary servitude and that a person may be held to involuntary servitude by being intentionally deprived of the ability to make a rational choice not to remain in the mas-

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among the poorest"; (e) was "furnished * * * by [the] defendant [with substandard food]"; (f) was "denied the right to have friends and * * * required to send away a relative who called"; (g) "physically abused on several occasions"; and (h) was threatened with commitment to a mental institution. *Id.* at 77. The totality of these circumstances persuaded the court in *Ingalls*, as they did the jury in this case, that the victim was " 'in a state of enforced compulsory service' " (*id.* at 78) (citations omitted).

[17] Testimony in hearings held before the House Committee on Revision of the Laws in 1944 and before the House Committee on the Judiciary in 1947 confirms that Congress was aware of the "revival" then occurring in the use of the slavery and peonage provisions of the Criminal Code. See *1947 House Hearings* 14 (testimony of Justin Miller); *1944 House Hearing* 14 (same). Although Congress expanded the scope of Section 1584 beyond that of both the Padrone statute and the Slave Trade statute, it declined requests that it enact even broader legislation on the same subject, which was deferred until a later date (*1947 House Hearings* 14; *1944 House Hearing* 14).

[18] The sole exception is the Second Circuit in *United States* v. *Shackney*, 333 F.2d 475, 486-487 (1964).

ter's service. According to the Ninth Circuit, the "crucial factor" is not the precise character of the means of coercion. See *United States* v. *Mussry*, 726 F.2d 1448, 1453, cert. denied, 469 U.S. 855 (1984). Rather, "[a] holding to involuntary servitude occurs when an individual coerces another into his service by improper or wrongful conduct that is intended to cause, and does cause, the other person to believe that he or she has no alternative but to perform the labor" (*ibid.*). Prior decisions of the Fifth and Eleventh Circuits have suggested their agreement with the Ninth Circuit standard and their disagreement with the inflexible standard now adopted by the Sixth Circuit in this case. See *United States* v. *Bibbs*, 564 F.2d 1165, 1167 (5th Cir. 1977) ("the law takes no account of the means of coercion"), cert. denied, 435 U.S. 1007 (1978); *United States* v. *Warren*, 772 F.2d 827, 833-834 (11th Cir. 1985) ("[v]arious forms of coercion may constitute a holding in involuntary servitude"); see also *United States* v. *Shackney*, 333 F.2d at 488 (Dimock, J., concurring) ("Where the subjugation of the will of the servant is so complete as to render him incapable of making a rational choice, the servitude is involuntary.").

In reaching a contrary view, the court below drew the wrong lesson from the historical materials. Rather than viewing the two predecessor statutes of Section 1584 as demonstrating Congress's awareness that involuntary servitude is not invariably accompanied by legal or physical coercion, the court of appeals focused on the precise evil that had provoked each of those statutes, and concluded that Congress was specially concerned with the exploitation of minors, incompetents, and immigrants. Yet by their

terms, the predecessor statutes were not limited to persons in those groups, and there is no suggestion in the history of Section 1584 that Congress meant to confine the new statute in that way.

The important point that the court of appeals overlooked is that the two predecessor statutes establish that Congress has never subscribed to the view that legal or physical coercion is a necessary component of involuntary servitude. Section 1584 simply applied that principle in a more general fashion. Accordingly, the background of Section 1584 does not at all support the restrictive construction adopted by the Sixth Circuit or the even more restrictive reading adopted by the Second Circuit, which would limit the scope of the statute in all cases to instances of legal or physical coercion. There is no such language of limitation in the statute, and that result is manifestly not what the 1948 Congress intended.

C. A Construction Of "Involuntary Servitude" Commensurate With Its Plain Meaning Is Not Unduly Broad And Does Not Present Vagueness Concerns

Respondents (Br. in Opp. 5) and the Sixth Circuit (Pet. App. 14a), have suggested that the term "involuntary servitude" must be read narrowly to avoid sweeping into the criminal net a host of innocent "day-to-day activities" involving "general psychological coercion" (*ibid.*). These concerns are unfounded.

1. The stringent demands of the elements of the involuntary servitude offense ensure that prosecutions will occur, as in this case, only in the most egregious circumstances. The small number of prosecutions brought under these provisions testifies to the stringency of their elements. As previously noted, the government must establish that: (1) the victim

worked for another against his will; (2) the defendant acted "knowingly and willfully" with the specific intent to overcome the will of the victim; and (3) the defendant's conduct caused the forbidden result. Contrary to respondents' suggestion (Br. in Opp. 4), there is no danger that prosecutors, courts, and juries will be unable to distinguish, through the application of those elements, between psychological coercion linked to "the ineffable attraction of a loved one, the charisma of a spiritual leader, [and] the compelling character of a political leader" and the type of coercive conduct engaged in by respondents in this case.

a. First, the government must prove that the victim is working for another against his will. To do so, the government must show either that the master physically restrained the victim or left the victim no choice but to remain. "No choice" does not merely mean that there are no attractive or painless options. Instead, the victim must have been left, or believed that he was left, with no tolerable alternative but to remain in the master's service. For the victim to have no choice means either that his power to choose must have been destroyed by the master or that his only choice besides working for the master is to suffer death or physical injury, or a consequence that the victim regards as equally serious or even more serious than those.[19]

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[19] Because the severity of the threatened harm depends on the subjective view of the victim, it is not possible to devise a categorical list of the kinds of threatened injuries that are sufficient to subject an individual to involuntary servitude. As Judge Dimock explained in his opinion concurring in the judgment in *United States* v. *Shackney*, 333 F.2d at 487, "[i]t is impossible to generalize the means by which the will of man

Hence, as the district court instructed the jury in this case (see Pet. App. 11a), "an employer can use any legitimate means to retain the services of an employee, such as offering the employee benefits, or seeking to convince the employee that he would be better off if he continued in his employment." Such inducements do not wrongfully eliminate choice, and while they may persuade the employee to remain, they do not have the effect of overcoming the employee's right to choose his employment.[20] Likewise,

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can be subjugated." To a drug addict, "the threat of deprivation of his supply is certainly more overbearing than the threat of almost any kind of force" (*ibid.*). Nonetheless, certain injuries fall so far short of what is generally viewed as a grave loss that it is virtually inconceivable that they would be the equivalent in any victim's mind to death or serious bodily injury. Thus, Judge Friendly's hypothetical case in *Shackney*, 333 F.2d at 480, involving an employer's threat to prevent his employee's son from being admitted to Yale Law School—which we, like Judge Friendly, will assume to be an injurious result—is not remotely of the type that would ordinarily be deemed to leave an employee with "no choice" but to continue to work for the master.

[20] The Court's decision in *Chatwin* v. *United States*, 326 U.S. 455 (1946), involving the federal kidnapping statute, illustrates the extent of the government's burden in an analogous context. In *Chatwin*, this Court held that the kidnapping statute did not apply where a 68-year-old man and several others, all of whom were members of a fundamentalist cult, persuaded a 15-year-old girl that she should abide " 'by the law of God rather than the law of man,' " and leave and hide from her family to live with them (*id.* at 458). The Court concluded (*id.* at 464) that however distasteful the circumstances, the federal kidnapping statute had not been violated, because a lack of voluntariness had not been established. The Court rejected (*id.* at 460-461) the government's argument that the young girl was incapable of rational choice, and the Court found that she had been a willing participant in the events.

poor working conditions do not themselves establish involuntary servitude. "[I]n general, the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers" (*Pollock* v. *Williams*, 322 U.S. at 18), and even occupations (see *Flood* v. *Kuhn*, 443 F.2d 264, 268 (2d Cir. 1971), aff'd on other grounds, 407 U.S. 258 (1972)). Finally, where it is at issue, the government ordinarily must explain why the victim could not, or believed he could not, escape or seek assistance from law enforcement officials or others. Evidence that the victim did not take advantage of opportunities to escape or seek assistance will make it difficult for the government to prove that the victim lacked any choice but to continue in servitude, unless the evidence provides a satisfactory explanation for the victim's failure to exploit such opportunities.[21]

b. Second, the government must establish that the defendant knowingly and willfully compelled the victim to work against his will, which means that the defendant must specifically intend to cause that result

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[21] That the two farm workers were physically free to leave respondents' farm and on several occasions returned to respondents' farm on their own renders proof of involuntary servitude more difficult in this case, but those factors do not preclude prosecution of respondents, because other evidence overwhelmingly establishes the involuntary nature of the workers' remaining on the farm and returning to it on those occasions. Cf. *United States* v. *Bibbs*, 564 F.2d 1165, 1168 (5th Cir. 1977) ("During the years slavery existed in this country, slaves often worked in the fields and went into town with little direct supervision, thereby offering them opportunities to escape. Yet it is beyond argument that the slaves were held in involuntary servitude."); *Peonage Cases*, 123 F. at 675 ("Peons had become so degraded that in many instances they voluntarily returned to the compulsory service.").

by his conduct. "[S]pecific intent or purpose * * * require[s] some specialized knowledge or design for some evil beyond the common-law intent to do injury." *Morissette* v. *United States*, 342 U.S. 246, 265 (1952) (footnote omitted). For instance, in a case such as this one, which involves victims who are particularly susceptible to coercion, the government must do more than just show that respondents' conduct had the effect of compelling their labor; the government must further establish that respondents were aware of their victims' vulnerabilities and deliberately exploited them for the purpose of compelling their continued labor against their will. The specific intent element removes from the reach of federal criminal sanctions the kinds of innocent "day-to-day activities" involving psychological inducements that the court of appeals feared would be subject to criminal prosecution under the interpretation of the involuntary servitude provisions that we propose.

c. Finally, the defendant's conduct must be the *cause* of the victim's condition. A person does not hold another to involuntary servitude when the coercion stems from societal conditions rather than from the defendant's own conduct. For instance, "economic necessity may force persons to accept jobs that they would prefer not to perform or to work for wages they would prefer not to work for [and] [s]uch persons may feel coerced into laboring at those jobs." *United States* v. *Mussry*, 726 F.2d at 1453. An employer is not legally responsible for that source of coercion under either the Thirteenth Amendment or Section 1584 and hence could not be prosecuted on that basis. For that reason, an employer does not engage in coercive activity within the scope of either the Thirteenth Amendment or Section 1584 when he truthfully informs an employee about the severe economic disadvantages of leaving, even if those disadvantages include the possibility of no further employment (and starvation), and even if the employer provides that information to the employee for the purpose of inducing the employee to remain in his service.

2. Nor is the meaning of the term "involuntary servitude" so vague as to raise constitutional concerns and justify "distortion or nullification of the evident meaning and purpose of the legislation." *United States* v. *Gaskin*, 320 U.S. 527, 529-530 (1944) (footnote omitted) (rejecting vagueness challenge to federal Anti-Peonage Act).

We submit that the term "involuntary servitude" affords defendants "a reasonable degree of certainty" as to the scope of the prohibition. *Boyce Motor Lines* v. *United States*, 342 U.S. 337, 340 (1952). "[O]rdinary people can understand what conduct is prohibited," and "arbitrary and discriminatory enforcement" is not encouraged. *Kolender* v. *Lawson*, 461 U.S. 352, 357 (1983). Moreover, the requirement that the government prove specific intent on the part of any defendant to hold a victim in involuntary servitude provides significant protection against the infirmities of vague legislation. A specific intent requirement has often been held to allay vagueness concerns in legislation subject to a due process challenge. See *Hoffman Estates* v. *Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982); *Colautti* v. *Franklin*, 349 U.S. 379, 395 (1979); *United States* v. *Petrillo*, 332 U.S. 1, 7 (1947).

Accordingly, this Court and lower courts have uniformly rejected vagueness challenges to criminal laws the violation of which, as in this case, turns on the degree of coercion used or the absence of a victim's consent. See *United States* v. *Petrillo*, 332 U.S. at

3, 5-8 (upholding statute making it unlawful to "coerce" an employer to hire more employees than he needs); *CISPES* v. *FBI*, 770 F.2d 468, 475-477 (5th Cir. 1985) (upholding statute making it unlawful to coerce certain foreign officials); *International Society for Krishna Consciousness* v. *Eaves*, 601 F.2d 809, 830-831 (5th Cir. 1979) (upholding ordinance making it unlawful to coerce another person at an airport); *NLRB* v. *Union Nacional de Trabajadores*, 540 F.2d 1, 11 n.9 (1st Cir. 1976) (upholding statute prohibiting unions from coercing employees in the exercise of their labor law rights), cert. denied, 429 U.S. 1039 (1977).[22]

To be sure, whether a person has been held to involuntary servitude may be a matter of degree in a particular case. "[T]he location of the point at which pressure turns into compulsion, and ceases to be inducement, [is a] question of degree—at time, perhaps, of fact." *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 590 (1937). A criminal provision is not, however, rendered unconstitutionally vague on that account. "That there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason

---

[22] A number of other federal civil rights statutes similarly prohibit certain coercive activities. See, *e.g.*, 42 U.S.C. 1971(b) (making it unlawful to coerce someone for the purpose of interfering with his right to vote); 42 U.S.C. 2000a-2 (making it unlawful to coerce someone for the purpose of interfering with his right to nondiscriminatory access to places of public accommodations); 42 U.S.C. 3617 (making it unlawful to coerce someone in the exercise of his rights to fair housing).

to hold the language too ambiguous to define a criminal offense." *United States* v. *Petrillo*, 332 U.S. at 7.

The line-drawing problem cannot be avoided by taking refuge in the standard adopted by the Second Circuit in *Shackney* and the court of appeals in this case (as it pertains to persons other than minors, immigrants, and incompetents). Threats of physical violence are seldom explicit, and they are often conveyed in a manner that is made to appear, at least in part, as an expression of concern for the victim's welfare. Thus, the employer's statement to the employee that if he leaves his employment he will starve is not a direct threat of physical violence, but it has the same effect. And the employer's statement that if the employee leaves, the state will imprison him for unlawfully leaving his job is not a threat of physical injury or a form of coercion by force of law, but if the employee believes it to be true, the employer's "prediction" has precisely the same impact as such a threat. Yet it is not clear whether that conduct would violate the involuntary servitude provisions under the test adopted by the Second and Sixth Circuits. A defendant subject to prosecution for such conduct could make the same claim that respondents made here—that the involuntary servitude provisions, even as construed by the Second and Sixth Circuits, are unconstitutionally vague.

In sum, involuntary servitude is a condition that, as Congress has repeatedly recognized, manifests itself in many forms. For that reason, it is difficult, if not impossible, to define the term with perfect precision while at the same time being faithful to the purposes of the Thirteenth Amendment and the statutes Congress has enacted to enforce it. We submit, however, that a defendant who willfully seeks to obtain

service from another individual by forcing him to work against his will, by whatever means, has notice that his conduct is criminal and may not seek refuge in the contention that the prohibitions against involuntary servitude are impermissibly vague.

CONCLUSION

The judgment of the court of appeals should be vacated and the case should be remanded for retrial under standards consistent with the views expressed herein.

Respectfully submitted.

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In the

Supreme Court of the United States

October Term, 1987

UNITED STATES OF AMERICA,
Petitioner,
v.
IZE KOSMIDESKI, ET AL.,
Respondents.

ON CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

ARGUMENT

THE DEFINITION OF INVOLUNTARY SERVITUDE PROMULGATED BY THE COURT BELOW IS BASED UPON LEGISLATIVE HISTORY OF PREDECESSOR STATUTES, PROTECTS THOSE WHOM IT WAS INTENDED TO PROTECT, AND GUARDS AGAINST IMAGINATIVE PROSECUTION OF CULT GROUPS, CHARISMATIC RELIGIOUS LEADERS AND THE LIKE.

The issue in this case is what is the proper definition of 'involuntary servitude'.

The Court of Appeals defined 'involuntary servitude' as follows:

> 'We conclude that a "holding to involuntary servitude" occurs when (a) the servant believes that

he or she has no viable alternative but to perform service for the master (b) because of (1) the master's use or threatened use of physical force, or (2) the master's use or threatened use of state-imposed legal coercion (*i.e.*, peonage), or (3) the master's use of fraud or deceit to obtain or maintain services where the servant is a minor, an immigrant or one who is mentally incompetent. In cases in the last category, it must be shown that the servant is under a disability to recognize or resist the master's fraud or deceit because of the servant's vulnerability as a member of one of these classes. In order to be found guilty under the statute, the master must intentionally hold the victim to involuntary servitude in one of these proscribed ways.' [footnote omitted] (App to Pet, 12a-13a)

The Court of Appeals fashioned this definition after 'reread[ing] and reconsider[ing] the unusual legislative development and history of § 1584' (App to Pet, 7a) and carefully analyzing its predecessor statutes because the Court of Appeals

> '[B]elieve[d] it is a mistake to read § 1584 in isolation from the older statutes which produced it. Without the earlier statutes, particularly the *Padrone* statute, and the legislative purpose which animated them, § 1584 would not exist today. Section 1584 does not appear to have any legislative purpose or history aside from that associated with the parent statutes. We therefore believe it necessary to define § 1584 in terms of the nature of the evil which the two predecessor statutes sought to prevent.' (App to Pet, 10a)

This was a preeminently sensible manner in which to proceed since the dissent conceded that '[i]t is clear that 18 U.S.C. § 1584 is lacking in definitional precision when it makes criminal the holding of one in "involuntary servitude"'. (App to Pet, 51a) The Court of Appeals pointed out that the writers of the opinions in *United States* v *Schackney*, 333 F2d 475 (CA2 1964) and *United States* v *Mussry*, 726 F2d 1448 (CA9 1984) 'did not draw on the old statute in framing a standard under § 1584' nor 'do any of the other cases decided to date'. (App to Pet, 10a) Drawing upon the legislative history of a statute to determine the meaning of the statute and the intent of Congress is a technique which is not a stranger to the jurisprudence of this Court. See for example *INS* v *Cardoza-Fonseca*, __ US __, 107 S Ct 1207, 1213-1219 (1987).

The definition adopted by the Court of Appeals encompasses protections against what can be called the classical condition of slavery which existed in the United States prior to the adoption of the Thirteenth Amendment and which the amendment was designed to proscribe; and it 'protects those whose services have been wrongfully obtained and who believe that they have no viable way of avoiding the services demanded' (App to Pet, 13a); and it protects those who are coerced to render services by physical force or legal coercion as defined in *United States* v *Schackney*, *supra*, by *United States* v *Harris*, 701 F2d 1095, 1100 (CA4 1983) ['threat of violence or confinement, backed sufficiently by deeds'], by *United States* v *Bibbs*, 564 F2d 1165, 1168 (CA5 1977) ['such fear of physical harm that the victim is afraid to leave, regardless of the victim's opportunities for escape'], and by *United States* v *Warren*, 772 F2d 827, 833-34 (CA11 1985) ['[t]he use, or threatened use, of physical force to create a climate of fear is the most grotesque example of such coercion']; and it

'protect[s] extremely vulnerable classes of individuals covered by the 1874 *Padrone* statute, classes similar to those who lack the capacity to contract at common law'. (See App to Pet, 13a, for all of the above.)

Petitioner rejects the definition adopted by the Court of Appeals as too narrow and prefers the definition of 'involuntary servitude' promulgated by the 9th Circuit in *United States* v *Mussry*, 726 F2d 1448, 1452-1453 (CA9 1984):

> 'The essence of a holding in involuntary servitude is the exercise of control by one individual over another so that the latter is coerced into laboring for the former. [citations omitted] The use, or threatened use, of law or physical force is the most common method of forcing another to enter into or remain in a state of involuntary servitude.
>
> * * *
>
> 'Conduct other than the use, or threatened use, of law or physical force may, under some circumstances, have the same effect as the more traditional forms of coercion — or may even be more coercive; such conduct, therefore, may violate the 13th amendment and its enforcing statutes. The crucial factor is whether a person intends to and does coerce an individual into his service by subjugating the will of the other person. A holding in involuntary servitude occurs when an individual coerces another into his service by improper or wrongful conduct that is intended to cause, and does cause, the other person to believe that he or she has no alternative but to perform the labor.

> 'In determining the question of involuntariness, the court should consider whether the challenged conduct would have had the claimed effect upon a reasonable person of the same general background and experience. Thus, the particular individual's background is relevant in deciding whether he or she was coerced into laboring for the defendant.'

Not only is it true, as the Court in *Mussry* stated, that '[t]he use, or threatened use, of law or physical force is the most common method of forcing another to enter into or remain in a state of involuntary servitude', but the 13th Amendment, declaring that neither slavery nor involuntary servitude shall exist, 'was adopted with reference to conditions existing since the foundation of our government, and the term "involuntary servitude" was intended to cover those forms of compulsory labor akin to African slavery which, in practical operation, would tend to produce like undesirable results', *Butler* v *Perry*, 240 US 328, 332-333 (1915), and the two concepts — use of physical force or law and compulsory labor akin to African slavery — were complementary phenomenological aspects of involuntary servitude.

That this is so is evident from language from early cases. In *Shackney, supra*, the Court stated that:

> 'The first judicial interpretation of this phrase in the 13th Amendment that we have found is in Tyler v. Heidorn, 46 Barb. 439, 458 (Albany General Term, 1866). The court there said:
>
> "The term *involuntary servitude*, in my opinion, is substantially synonymous with *slavery*, though it may perhaps be regarded as slightly more comprehensive, and as em-

> "'bracing every thing under the name of *servitude*, though not denominated slavery, which gives to one person the control and ownership of the involuntary and compulsory *services* of another against his will and consent."' *Ibid*, at 484-485.

And in *Slaughter House Cases*, 16 Wall 36, 69, 83 US 36, 69 (1873), the Court, referring to the 13th Amendment, stated:

> 'That a personal servitude was meant, is proved by the use of the word "involuntary", which can only apply to human beings. The exception of servitude as a punishment for crime gives an idea of the class of servitude that is meant. The word "servitude" is of larger meaning than "slavery", as the latter is popularly understood in this country, and the obvious purpose was to forbid all shades and conditions of African slavery. It was very well understood that in the form of apprenticeship for long terms, as it had been practised in the West India Islands, on the abolition of slavery by the English government, or by reducing the slaves to the condition of serfs attached to the plantation, the purpose of the article might have been evaded, if only the word "slavery" had been used.'

Thus, objective standards could be applied under established definitions to determine whether the victim had been held in slavery or to involuntary servitude and to determine whether the master had intended that result. It could be objectively determined whether the victim performed compulsory services against his will and consent and whether the master used force or legal coercion or the threat thereof to gain control of the victim's services. It is easy to conclude

that one who uses force or legal coercion or the threat thereof intends thereby to subject the victim to a servitude akin to African slavery.

Under the definition promulgated by the Court of Appeals in the case at bench, objective standards can also be applied to determine the status of the victim and the intent of the master. Whether the victim believes that he or she had no viable alternative to perform service for the master and whether the master utilized force or legal coercion or the threat thereof or fraud or deceit can be determined according to objective criteria, and fair inferences can be made of the master's intent *vel non* to hold the victim to involuntary servitude.

Petitioner urges that under the *13th Amendment* and under *18 USC 1584* involuntary servitude is condemned, in all circumstances and irrespective of the precise manner by which it is brought about, and that the proper criterion for judging the guilt of an accused 'is whether [defendant] intends to and does coerce an individual into his service by subjugating the will of the other person', as expressed by the Court in *United States* v *Mussry*, *supra*, at 1453.

The difficulty is with the phrase 'by subjugating the will of the other person'. Seizing upon this phrase, petitioner would make the quantum leap to the position that the statute encompasses within its proscriptive terms the subjugating of the will of the victim by psychological means in the complete absence of any physical or legal coercion or any threats thereof, and in the absence of any fraud or deceit. The quagmire of subjectivity into which the pursuit of this position would lead is illustrated by the government's theory of the defendants' culpability postulated in the case at bench.

The government's theory of the case was that the two farm hands 'were the victims of psychological coercion and had been "brainwashed" into serving the [defendants]' (App to Pet, 15a, Opinion of the Court) and in support of this theory, the government called a Dr Harley Stock whose 'testimony was the only evidence that addressed the very essence of the government's charges' (App to Pet, 22a, concurring opinion, Krupansky, J). Dr Stock was a doctor of psychology (*id*, 48a); he 'was neither a medical doctor nor was he qualified in the specialty of psychiatry' (*id*, 45a). '[T]he concessions of the parties [were] that (a) neither Fulmer nor Molitoris were ever physically confined or restrained; (b) they were at all times physically free to leave the farm at will; (c) *they knew they were free to leave the farm*; (d) *they did in fact individually and together leave the farm on numerous occasions*; (e) they returned of their own accord or were picked up by the defendants as a result of telephone calls from third parties; (f) they associated freely with each other, with other farm hands working the farm, and with neighbors on occasion; (g) they remained at or returned to the defendants' farm, in the words of Fulmer, "because he had no place to go"' (*id*, 25a). When asked on direct examination whether he had any explanation for the farm hands' not leaving the farm, Dr Stock testified: 'Yes, on the surface, it appears that they had numerous opportunities to leave, and the question to me, interesting question, is why didn't they. It's my opinion that they were psychological hostages, that even though they had the physical ability to get away from the farm, they were so tied to the farm that these [defendants] were their only caretakers, they became psychologically substituted parents for them. They could not form the requisite intent to escape. . . . ' (*id*, 32a-33a).

The majority opinion characterized the testimony of Dr Stock as follows:

> 'Dr. Stock testified that given the victims' low mentality, the psychological pressures exerted upon them created an "involuntary conversion" to complete dependency akin to "captivity syndrome", a psychological phenomenon arising from prolonged physical captivity.' (*id*, 15a)

After rehearsing the ten necessary elements of 'captivity syndrome', the majority opinion states:

> 'These factors are not present in this case. There is no evidence that Fulmer and Molitoris were subjected to conditions equivalent to those described above. For example, there was no evidence of actual captivity, a necessary element of captivity syndrome. This list of conditions describes the process employed by the Chinese to "brainwash" prisoners of war during the Korean conflict. As bad as conditions on the Kozminski's dairy farm are alleged to be, they fall short of those found in a Chinese prison camp. Accordingly, captivity syndrome is inapplicable as a matter of law given the facts of this case.' (*id*, 17a)

The evils lurking in the broad definition of involuntary servitude advocated by petitioner with its complete absence of objective criteria to guide a jury is illustrated by the case at bench. No scrutiny of the testimony of the two farmhands will uncover a statement by either that during the period that he worked on the farm, he wanted to leave but felt or believed that he could not. Nor did either one testify that his will had been overborne or give any testimony or evi-

dence that might suggest that his will had been overborne by any act or actions of the defendants.

One is almost compelled to the conclusion that the genesis of the case is to be found in the thought of those instituting prosecution that the two farmhands should have wanted to leave the farm at some time during the years that they stayed at the farm, that the farmhands should have been repelled by the conditions of their work and their living quarters, and that because the farmhands made no attempt to leave the farm at any time even though each was free at all times to leave and none was ever physically restrained, something nefarious had to have occurred to overbear their individual wills to the extent that not only did they not leave the farm or even make any attempt to leave but each never developed a desire to leave nor the thought that he could have a desire to leave.

Thus, working backward from the foregoing conclusions, the prosecution found an 'expert' who was willing to testify to a theory the validity of which was proven only by himself to himself, which would 'explain' why the two farmhands had never made an attempt to leave the farm nor even develop a desire or thought of leaving.

The jurors, having heard the testimony in the case the nature of which could only engender sympathy for the two farmhands, were then cast upon the sea of their deliberations by the trial judge without any charts or compass to guide them into port with a verdict consonant with law, with the following instructions *inter alia:*

> '[Involuntary servitude] may also include situations involving either physical and other co-

> 'ercion, or a combination thereof, used to detain persons in employment.
>
> 'It may include situations in which the coercive acts or words cause persons in employment to believe they cannot freely leave employment if the acts are done or the words spoken with the intent to cause this result.
>
> 'In other words, based on all the evidence it will be for you to determine if there was a means of compulsion used, sufficient in kind and degree, to subject a person having the same general station in life as the alleged victims to believe they had no reasonable means of escape and no choice except to remain in the service of the employer. In this respect you are instructed that you may find that not all persons are of like courage and firmness. You may consider the character and conditions of life of the parties, the relative inferiority or inequality between the persons who perform the service and the persons exercising the force or influence to compel its performance and the defendants' knowledge of these matters. (*id,* 109a-110a)
>
> • • •
>
> 'In order to find that a particular defendant is guilty of holding one or both of the alleged victims in involuntary servitude, in addition to the necessary coercion and intention on the part of the defendants, you must find that those means were an actual and necessary cause of the decision of one or both of the alleged victims to continue working for the Kozminskis. In other words, you must determine if one or both of the alleged victims would have left the employment

'if they had not been subjected to improper conduct on the part of that particular defendant.

'In determining whether or not the improper means was a necessary cause of the decision of the alleged victim to continue working for the Kozminskis, you must evaluate all of the factors that might have affected that decision, including any legitimate means used by that defendant to convince the alleged victim to retain the employment. After considering all of the factors that might have affected that decision, you must decide whether or not the decision of either or both of the alleged victims to remain on the farm would have been made if improper means had not been used by a particular defendant.' (*id*, 111a-112a)

A more amorphous and indefinite set of instructions bearing upon the pith and substance of the case would be difficult to draft. They do, however, in their indefiniteness and vagueness and broad generality comport with petitioner's proposed definition of involuntary servitude, and constitute a net so broad as to certainly enmesh any person whom the government chooses to charge under § 1584.

This is the result which the Court of Appeals sought to prevent when with its words condemnatory of the trial court's instructions, it said:

> 'The District Court's rulings and instructions would appear to criminalize general psychological coercion without fraud, deceit, force or legal coercion and would include all individuals within the covered class of victims subject to psychological coercion, not just the particularly vulnerable classes referred to in the legislative

> 'history of the statute. The Ninth Circuit's, the panel's and the District Court's broad definition might appear to place the day-to-day activities of cult groups, communes and religious orders within the coverage of the statute.' (*id*, 14a)

But, the *coup de grâce* to the government's theory in the case at bench and to petitioner's expansive definition of involuntary servitude was administered by Judge Kennedy in her concurring opinion:

> 'Psychological coercion which can be established only through testimony of expert witnesses presents a significant problem with respect to a defendant's intent and knowledge. Can a master be guilty of holding someone in involuntary servitude where the master, a lay person, doesn't know that the servant remains involuntarily? If expert testimony is necessary for the jury to find the servitude involuntary, it would seem that a defendant also needs that expert knowledge.
>
> 'Where the master uses force or the threat of force or state-imposed legal coercion to require the servant to remain, the intent to hold the servant in involuntary servitude is apparent. Here evidence that the master treated the servants cruelly and provided deplorable living conditions was relevant to establishing involuntariness only because of the clinical psychologist's testimony that such treatment, alternated with kind treatment, such as providing a nice Sunday dinner, made the servants dependent and unable to leave. Conduct which had such effect, but without evidence that the master knew or should have known of that effect, does not tend to prove intent. In the case of psycho-

> 'logical coercion, the jury should be required to find that the defendant knew his conduct would cause the victim to remain involuntarily. The master does not hold the servant to involuntary servitude unless the master knows that the servant serves involuntarily.' (*id*, 18a)

Clarity and definiteness is a basic desideratum of the criminal law. The definition of involuntary servitude promulgated by the lower court gives us that; the definition urged by petitioner does not.

CONCLUSION

This Court should affirm and approve the definition of involuntary servitude promulgated by the United States Court of Appeals for the Sixth Circuit in the case at bench.

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REPLY

BRIEF

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OCTOBER TERM, 1987

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v.

IKE KOZMINSKI, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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1. Respondents adopt the court of appeals' view that involuntary servitude must result from physical or legal coercion unless the victim is a minor, immigrant, or mental incompetent, in which case coercive means that are fraudulent or deceitful in character may form the basis of a prosecution for involuntary servitude. Amicus International Society for Krishna Consciousness of California, Inc., appears at times to embrace the position taken by the Second Circuit in *United States* v. *Shackney*, 333 F.2d 475 (1964), that the Thirteenth Amendment and Section 1584 are concerned only with physical or legal force (see Amicus Br. 7, 8). Amicus, however, ultimately contends (*id.* at 11) only that the threat of physical or legal force must be the "principal feature" of the prosecution; "other forms of coercion," it admits, may be relevant and "the psychological element of the [victim's] alleged circumstances cannot be ignored" (Amicus Br. 1, 10 n.4, 11).

Neither respondents nor amicus offers any evidence that Congress or the framers of the Thirteenth Amendment in-

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tended to impose the arbitrary limitations they would place on the meaning of "involuntary servitude." The language of both laws is inconsistent with the proposed restrictive readings. As explained in our opening brief (at 15-21), both laws broadly condemn the intentional creation of a result—involuntary servitude—without limiting the means by which that result is achieved. In particular, there is no merit to the claim made by amicus (Br. 9) that the word "hold[]" in Section 1584 supports the view that Congress intended to confine the scope of that statutory provision to physical or legal force. The plain meaning of "hold" in this context is to "retain in one's keeping," "maintain possession of," or "not give up or relinquish" (see *Webster's Third New International Dictionary* 1078 (1976)). "Hold" does not address, let alone dictate, the manner by which involuntary servitude is created. Indeed, amicus concedes as much in acknowledging that our proposed construction of Section 1584 is "within the letter of the statute" and in relying principally on its view that the "spirit" of the law rather than its "letter" should govern (see Amicus Br. 5, citing *Holy Trinity Church* v. *United States*, 143 U.S. 457, 459 (1892)).

The legislative history of the predecessor to Section 1584 also does not support a restrictive reading of that statute. Although legal and physical force were undoubtedly among Congress's principal concerns when it enacted the Slave Trade statute and the Padrone statute, the legislative history of neither law suggests that those were Congress's exclusive concerns. Rather, as explained in our opening brief (at 22-32), the background of both statutes supports our view that Congress was concerned then, as it was when it subsequently enacted Section 1584, with more subtle forms of coercion as well. Respondents and the court of appeals admit as much, by conceding that fraud and deceit can result in involuntary servitude even in the absence of

legal and physical force. But they arbitrarily confine any consideration of fraud and deceit to a narrow class of cases, without any support in the language of Section 1584.[1]

In addition, contrary to respondents' claim (Br. 6-9), an abstract desire for "objectiv[ity]" does not justify a court undertaking the inherently legislative task of replacing the deliberately broad language of the Thirteenth Amendment and Section 1584 with a complex and sharply qualified formula. Nor, in any event, does respondents' asserted desire for "objectiv[ity]" justify the categories themselves. For example, respondents concede (Br. 6-7) that a court can "objectively" determine that a defendant has, through fraud and deceit, held a minor, immigrant, or mental incompetent to involuntary servitude. The judicial inquiry, however, is no less objective when the victim is other than a minor, immigrant, or mental incompetent. Yet the court of appeals and respondents would not allow consideration of fraud and deceit in those circumstances.

Nor do the "difficulties of applying a statute which calls for 'an appraisal of the state of the human mind' " justify construing the law more narrowly than its plain meaning requires (see Amicus Br. 18 (footnote omitted), quoting *United States* v. *Shackney*, 333 F.2d at 488 (Dimock, J., concurring)). Such difficulties are inherent in any statute that makes particular conduct unlawful in the absence of the victim's consent (see, *e.g.*, Estrich, *Rape*, 95 Yale L. J. 1087 (1986)), and courts have properly not shied away from committing such issues to the finder of fact. Cf. *Pullman-*

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[1] Likewise lacking any support in the statutory language is amicus's assertion that consideration of "other forms of coercion" must be confined to cases where physical or legal coercion is the "principal feature" of the prosecution.

Standard v. *Swint*, 456 U.S. 273, 288 (1982) ("Treating issues of intent as factual matters for the trier of fact is commonplace."); *Commissioner* v. *Duberstein*, 363 U.S. 278, 286 (1960) (intent or motive is a factual issue "that inquires what the basic reason for his conduct was in fact"); *Edgington* v. *Fitzmaurice*, 29 L.R.-Ch. D. 459, 483 (1885) ("[T]he state of a man's mind is as much a fact as the state of his digestion."). There is, moreover, nothing inherently suspect about permitting criminal liability to turn on the victim's subjective state of mind rather than on the state of mind of a "reasonable individual" in the victim's circumstances, particularly where, as in the instant case, the government must establish that the defendant specifically intended to induce that state of mind. It is long settled that many criminal prohibitions "are designed to protect not only the ordinarily wary and prudent, but also the ignorant, credulous, and foolish." See, *e.g.*, *State* v. *Foot*, 100 Mont. 33, 40, 48 P.2d 1113, 1115 (1935) (larceny by false pretenses). Indeed, the Thirteenth Amendment is especially concerned with the exploitation of persons who are poor and ignorant. See *Bailey* v. *Alabama*, 219 U.S. 219, 245 (1911); *United States* v. *Reynolds*, 235 U.S. 133, 150 (1914) (Holmes, J., concurring).

The limiting principle proposed by amicus—that physical or legal force must be the "principal feature" of the government's evidence of coercion—is equally unsatisfactory. As a practical matter, evidence of physical or legal coercion will, as in this case, almost always be present in cases resulting in prosecution under Section 1584 or Section 241 (18 U.S.C.) and the Thirteenth Amendment (see U.S. Br. 14-15 & n.4). There is no logical reason, however, why physical or legal coercion must be the primary cause of the victim's involuntary servitude. If it is correct, as amicus asserts, that an individual's labor cannot be

compelled against his will in the absence of physical or legal coercion, then that is true as a factual matter, and any prosecution brought in those circumstances will fail for that reason. That, however, is a matter for a properly instructed jury to decide. There is nothing in the language or the historical background of the Thirteenth Amendment or Section 1584 to suggest that Congress meant to exclude from the jury's consideration factors other than physical or legal coercion.

The reliance by amicus (Br. 11) on the common law tort of false imprisonment is also misplaced. It is well settled that physical and legal force are not the only means by which the common law tort of false imprisonment may be committed. Indeed, the restraints necessary to trigger tort liability for false imprisonment are less demanding than what we suggest must be established to prove the crime of holding another to involuntary servitude. To establish false imprisonment, it is sufficient to show that the confinement is by "submission to duress other than threats of physical force, where such duress is sufficient to make the consent given ineffective to bar the action." 1 Restatement (Second) of Torts § 40A comment a, at 61 (1965); see 1 F. Harper, F. James & O. Gray, *The Law of Torts* § 3.8, at 293 (2d ed. 1986) (footnote omitted; emphasis added) ("the confinement may take place by means of threats of force or *other means of intimidation* or fear of violence"); see also 4 Restatement (Second) of Torts § 892B comment j, at 375-376 (1979) (duress sufficient to render consent ineffective could be a threat to property). To establish false imprisonment, unlike involuntary servitude, it is also sufficient to show that the only means of escape from confinement would be "offensive to a reasonable sense of decency or personal dignity" (1 Restatement (Second) of Torts, *supra*, § 36 comment a, illustration 5, at 55). The

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government's burden is considerably greater in the case of involuntary servitude; as we explained in our opening brief (at 33), the government must establish that, as a result of the master's intentional and deliberate conduct, either the victim's power to choose not to serve the master has been destroyed or the victim's only choice besides working for the master is to suffer death, physical injury, or a consequence that the victim regards as equally or more intolerable.

2. For similar reasons, the contention (Resp. Br. 7-10; Amicus Br. 13-16) that "brainwashing" cannot provide the basis for involuntary servitude is misdirected. If, as respondents and amicus assert, there is no way that one individual can "brainwash" another into working against his will, the government will not prevail in any case in which it relies on such a theory.[2] In any event, the attack on the "brainwashing" theory is a red herring. We are not proposing "some insidious new form of involuntary servitude," as amicus suggests (Br. 4). The issue presented by this case is

[2] Contrary to the suggestion made by respondents and amicus (Resp. Br. 8-9; Amicus Br. 14-15), it was not the government's primary contention in this case that respondents' conduct created a dependency akin to "captivity syndrome," a psychological phenomenon which supposedly arises from prolonged physical captivity. The government more broadly contended that respondents had, through a combination of coercive measures, caused their victims to believe they had no alternative but to labor for respondents. As described in our opening brief at 14-15; see *id.* at 4-7), those measures included physical and verbal abuse, subjection to substandard living conditions, denial of pay, threats of institutionalization, isolation, and false claims to others of legal authority (guardianship). In any event, the court of appeals held inadmissible the captivity syndrome testimony "because a foundation was not laid to establish its conformity to a generally accepted explanatory theory" (Pet. App. 15a) and we have not challenged that ruling in this case (see U.S. Br. 10 n.2).

quite simple: whether physical and legal force constitute the only legally cognizable causes of involuntary servitude. Our position is that coercive conduct can take forms other than physical and legal force. Indeed, respondents admit as much by conceding that in certain settings other forms of coercion—such as fraudulent and deceitful conduct—can play a role in compelling an individual to work against his will. The possibility that a party may in a particular case rely on conduct that is not coercive in that context does not justify construing the statute or the Thirteenth Amendment in a manner that precludes proof of conduct that *is* coercive in other settings. The proscribed result, which under both provisions is the same, is a simple one: compelling an individual to work against his will. If the defendant's conduct—whether it be called "brainwashing" or characterized in some other way—is designed to, and does, have the effect of compelling work by the victim against his will, the defendant is guilty of holding the victim to involuntary servitude. Otherwise, he is not. The denomination of particular conduct as "brainwashing" is thus unilluminating; the question is whether the conduct is coercive.[3]

[3] There is no merit to the repeated suggestion by amicus (Br. 2, 5, 12) that we, like the court of appeals, have imposed arbitrary limits on the reach of Section 1584 by our acknowledging that " '[a] person does not hold another to involuntary servitude when the coercion stems from societal conditions rather than [from] the defendant's own conduct' " (*id.* at 12 (quoting U.S. Br. 36)). The reason for our statement is quite clear. As we explained in our opening brief (at 36-37), an essential element of any criminal prosecution is that the defendant caused the result. In the context of Section 1584, that means that the government must show that the defendant's conduct, not societal conditions, caused the victim to work against his will. For this reason, amicus is mistaken in suggesting (Br. 6) that under our view "economic necessity" and the fear of "being blackballed" by others,

3. Respondents and amicus both assert (Resp. Br. 12-13; Amicus Br. 17-28) that the Court should ignore the plain meaning of the term "involuntary servitude" to avoid misapplication of the Thirteenth Amendment and Section 1584 to the day-to-day activities of certain groups, such as religious organizations. As a threshold matter, because both respondents and amicus agree that threats of physical violence may cause involuntary servitude, that potential problem may still arise. In any event, as we explained in our opening brief (at 32-40), the elements that the government must prove—that a victim is working against his will, and that the defendant both specifically intended to, and did, cause that result—provide protection against the risk that a defendant will be convicted on the basis of innocent conduct, whether grounded in religious beliefs or otherwise.

There is no basis for the concern expressed by amicus (Br. 9) that under our view a person is held to involuntary servitude if he decides to work for another based on "affection, loyalty, dedication to principle or devotion to higher ideals." As amicus elsewhere acknowledges (Br. 15), those are all instances of a person's deciding to work for another by his own volition. They therefore fall outside the reach of the Thirteenth Amendment and Section 1584.[4] However, while religious beliefs can explain an alleged victim's conduct in these cases and show why it is

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both of which presumably result from societal conditions and not from the defendant's conduct, would support a prosecution under Section 1584.

[4] Thus, in *Chatwin* v. *United States*, 326 U.S. 455 (1946), the Court concluded that a 15-year-old girl who left her family to live with members of a religious group where she could abide "by the law of God rather than the law of man" had done so voluntarily and therefore was not the victim of an unlawful kidnapping (see *id.* at 458, 460-461, 464). See U.S. Br. 34 n.20.

voluntary, the *defendant's* religious beliefs do not provide a defense to a prosecution for involuntary servitude. A defendant cannot justify forcing another to labor against his will on the ground that the defendant believes forced labor is consistent with or compelled by the tenets of a particular religion. "However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation." *Davis* v. *Beason*, 133 U.S. 333, 342-343 (1890). "Crime is not the less odious because sanctioned by what any particular sect may designate as religion" (*id.* at 345; see also *Reynolds* v. *United States*, 98 U.S. 145, 166 (1878)). Otherwise, a defendant would be immune from prosecution even when, consistently with his sincere religious beliefs, he uses physical force (conduct that amicus acknowledges is within the scope of the Thirteenth Amendment and Section 1584) to compel the labor of another. See *United States* v. *Lewis*, 649 F. Supp. 1109 (W.D. Mich. 1986), appeal pending, No. 87-1041 (6th Cir.), cert. denied, No. 87-5772 (Jan. 19, 1988); cf. *Tony & Susan Alamo Foundation* v. *Secretary of Labor*, 471 U.S. 290, 303 (1985).

In any event, religion played no role in this case. For that reason, the question presented in this case—whether involuntary servitude must be viewed as caused solely by physical or legal coercion—does not turn on the possibility that the First Amendment might limit its application in a future case involving behavior allegedly induced by the victim's religious beliefs. Where religious beliefs are involved, of course, well-settled principles of First Amendment law may affect the analysis. For instance, any law, including a criminal statute, must justify any incidental effect it might have on a fundamental constitutional right, such as the free exercise of religion. See *Wisconsin* v. *Yoder*, 406 U.S. 205, 213-215 (1972). In addition, the First

Amendment restricts judicial inquiry into the truth, validity, or reasonableness of a person's religious beliefs. See *United States* v. *Lee*, 455 U.S. 252, 257 (1982); *Thomas* v. *Review Board*, 450 U.S. 707, 716 (1981); cf. *Hobbie* v. *Unemployment Appeals Comm'n*, No. 85-993 (Feb. 25, 1987), slip op. 7 & n.9. Because that restriction would apply to the religious beliefs of the victim in an involuntary servitude prosecution, the First Amendment may affect a factfinder's ability to determine whether a victim is working against his will in cases where the victim's behavior is allegedly induced by his religious beliefs. None of these considerations, however, is present in this case.

For the foregoing reasons, and the reasons stated in our opening brief, it is respectfully submitted that the judgment of the court of appeals should be vacated and the case should be remanded for retrial under standards consistent with the views expressed herein and in our opening brief.

CHARLES FRIED
Solicitor General

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AMICUS CURIAE

BRIEF

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October Term, 1987

UNITED STATES OF AMERICA,

Petitioner,

v.

IKE KOZMINSKI, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA, INC. AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The International Society for Krishna Consciousness of California, Inc. hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. A letter of consent of the Solicitor General has been obtained, a copy of which is filed with the clerk concurrently herewith. Consent of the attorney for the Respondents was requested,

but Amicus has not as of this date received a response. Amicus' interest is discussed below.

INTEREST OF AMICUS

The International Society for Krishna Consciousness (ISKCON) is a worldwide religion. Krishna consciousness is generally accepted as an authentic Hindu religion within the Vaishnava tradition of Bhakti (devotional) Hinduism. *See generally, International Society for Krishna Consciousness v. Barber*, 650 F.2d 430, 433 (2d Cir. 1981); *Hare Krishna, Hare Krishna* (S. Gelberg ed. 1983).

Despite its ancient roots, the America Krishna conscioness movement is often described as one of the many new religions which have appeared in the United States in the last several decades. Krishna consciousness and other new religions, often perjoratively referred to as "cults," have been the object of accusations of "psychological coercion," "brainwashing" and other such attacks reminiscent of those made during the last century on Mormonism, Freemasonry and Catholicism. *See, e.g.*, Robbins and Anthony, *Cults, Brainwashing and Counter-Subversion* in 446 The Annals of the American Academy of Political and Social Science 78 (Nov. 1979).

One prominent theologian has correctly observed that "the term 'brainwashing' has no respectable standing in scientific or psychiatric circles, and is used almost entirely to describe a process by which somebody has arrived at convictions that I do not agree with." Interview with Professor Harvey Cox in *Hare Krishna, Hare Krishna,*

supra, at 50. Nevertheless, this pseudo-scientific concept has been the weapon for both civil and criminal prosecution against devotees of ISKCON and other new religions. *See, e.g., People v. Murphy*, 98 Misc. 236, 413 N.Y.S.2d 540 (Sup.Ct. 1977); *George v. International Society for Krishna Consciousness of California, et al.*, No. 27-75-65 (Orange County, Cal., Superior Ct. June 20, 1983) (appeal pending); *Molko v. Holy Spirit Assn.*, 224 Cal.Rptr. 817, *rev. granted*, 228 Cal.Rptr. 159 (1986).

The claims of psychological coercion and brainwashing resulting in false imprisonment levelled against the new religions bear a direct parallel to the theory of involuntary servitude employed by the government in this case. Compare, for example, the testimony of Dr. Harley Stock "offered to show that Fulmer and Molitoris were the victims of psychological coercion and had been 'brainwashed' into serving the Kozminskis," App. to Petition for Cert. at 15a, with that of the "experts" in *Molko v. Holy Spirit Assn., supra*, and *Katz v. Superior Court*, 73 Cal.App.3d 952, 141 Cal.Rptr. 234 (1977). One effort to use the Thirteenth Amendment directly against a religious organization has proved unavailing in part precisely because the court followed the carefully limited construction of involuntary servitude set forth in *United States v. Shackney*, 333 F.2d 475 (2d Cir. 1964); *see Turner v. Unification Church*, 473 F.Supp. 367, 375-76 (D.R.I. 1978), *aff'd* 602 F.2d 458 (1st Cir. 1979) (per curium), a limited construction the government would have this Court repudiate.

The use of the Thirteenth Amendment and its implementing statutes against new religious movements has

also been advocated at length by at least one anti-cult writer, Professor Richard Delgado. *See,* Delgado, *Religious Totalism as Slavery,* 9 N.Y.U. Rev. L. & Soc. Change, 51 (1979-80.) A broad construction of these laws thus threatens both directly and indirectly to impinge on speech and conduct protected under the speech and religion clauses of the First Amendment. Indeed, the Sixth Circuit Court of Appeals cautioned that the broad construction of involuntary servitude advocated by the government "might appear to place the day-to-day activities of cult groups, communes and religious orders within the coverage of the statute." App. to Petition for Cert. at 14a.

It is for these reasons Amicus Curiae is strongly interested in this case, and on this basis respectfully requests the Court's permission to file this brief.

Respectfully submitted,

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BOOKS, TREATISES AND ARTICLES

A. Bhaktivedanta, *Bhagavada-gita* As It Is (1972) 20

A. Hockma, *The Four Major Cults* (1963) 20

A. Sheflin & E. Opton, *The Mind Manipulators* (1978) 14, 22

Balch, *What's Wrong With the Study of New Religions and What Can We Do About It* in Scientific Research and New Religions 25 (B. Kilbourne, ed. 1985) 16

Barron, *The Judicial Code, 1948 Revision*, 8 F.R.D. 439 (1948) 8

Cox, *Deep Structures in the Study of New Religions*, in Understanding New Religions 127 (J. Needleman & G. Baker eds. 1978) 16

Delgado, *Religious Totalism as Slavery*, 9 N.Y.U. Rev. L. & Soc. Change 51 (1979-80) ..... iv, 25

D. Trueblood, *The People Called Quakers* (1966) 20

E. Ames, *The Psychology of Religious Experience* (1910) 21

E. Schipper, *Cults In North America* (1982) 24

Evangelico Nuntiandi

1 F. Harper, F. James, O. Gray, *The Law of Torts* (2d ed. 1986) 11

Hare Krishna, Hare Krishna (S. Gelberg ed. 1983) ii

Jarenga, *A Teenagers Life as Door-To-Door Missionary*, San Francisco Chron. Nov. 27, 1983 23

J. Wenger, *Glimpses of Mennonite History and Doctrine* (2 ed. 1947) 20

TABLE OF AUTHORITIES—Continued

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Note, *Involuntary Servitude: Modern Conditions Addressed In* United States v. Mussry, 34 Cath. U. L.Rev. 153 (1984) 8, 11

Prosser and Keaton on the Law of Torts (5th ed. 1984) 11

Robbins, *Religious Movements, The State, and the Law: Reconceptualizing "The Cult Problems,"* 9 N.Y.U. Rev. Law & Soc. Change 33 (1980-81) 27

R. Lifton, *Thought Reform And The Psychology of Totalism* (1961) 22

S. Ahlstrom, *The Religious History of the American People* (1972) 20

S. Baron, *A Social and Religious History of the Jews* (1952) 20

Shapiro, *Involuntary Servitude: The Need For A More Flexible Approach*, 19 Rutgers L. Rev. 65 (1964) 4, 9, 18

Robbins and Anthony, *Cults, Brainwashing and Counter Subversion* in 446 The Annals of the American Academy of Political and Social Science 78 (1979-80) ii

W. Cannon, *Evangelism in a Contemporary Context* (1974) 21

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF THE INTERNATIONAL SOCIETY FOR KRISHNA CONSCIOUSNESS OF CALIFORNIA, INC. AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

SUMMARY OF ARGUMENT

The Thirteenth Amendment and its implementing statutes address not every kind of involuntary servitude, but the holding to involuntary servitude by means of physical or legal coercion. While physical or legal force may be accompanied by other forms of coercion, the presence of such force is an essential limiting principle.

The government's absolutist construction of the Thirteenth Amendment and 18 U.S.C. § 1584 (West 1984) offends settled principles of statutory construction and the overwhelming weight of authority. Recognizing that the abandonment of physical or legal coercion in favor of "psychological coercion" makes the reach of the law both formless and limitless, the government proposes arbitrary limits on its authority which, in significant part, conflict with its premise that involuntary servitude is forbidden regardless of the means by which it occurs.

The government's construction of the law would also invite prosecution on the strength of inherently unreliable and unscientific testimony. Absent the anchor of objectivity afforded by the historical conception of the Thirteenth Amendment, either expert or lay testimony regarding "psychological coercion" or "brainwashing" must be the principal basis for prosecution. The government does not now defend Dr. Stock's testimony; its construction of the law nevertheless requires reliance upon such unreliable testimony.

The government's construction of holding to involuntary servitude is dangerously overbroad. It would embrace the activities of many religions, as well as other conduct protected by the First Amendment.

The history of the legislation enforcing the Thirteenth Amendment reflects Congress' ability to respond to a demonstrated need for broader statutes to address changing circumstances. If there is truly a need to address purely psychological manipulation as a means of creating involuntary servitude and a way of doing so consistent with other cherished values, that task should properly fall

to Congress in the first instance, and not to the judiciary. Pending congressional action, the construction of section 1584 adopted in *Shackney* is truest to legislative history, statutory terms and First Amendment values.

ARGUMENT

I.

THE THIRTEENTH AMENDMENT AND SECTION 1584 MUST BE NARROWLY CONSTRUED TO BE FAITHFUL TO THEIR HISTORY, TERMS AND INTENT AND TO AVOID CONFLICT WITH THE FIRST AMENDMENT.

The government advocates a construction of the Thirteenth Amendment and section 1584, which implements it, that the framers of that Amendment would not recognize. The government seemingly acknowledges that involuntary servitude in its modern forms results, if not exclusively, at least in principal part, from the same types of physical force, threats and legal coercion as characterized slavery before the Civil War.[1] Even in the instant case, the government maintains that Fulmer and Molitoris were not free to leave respondents' farm, but were returned there each time they tried to run away. Not content to try to prove involuntary servitude on the strength of such evidence of physical confinement and alleged physical abuse, the government has instead elected

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[1] See *United States v. Warren*, 772 F.2d 827 (11th Cir. 1985); *United States v. Harris*, 701 F.2d 1095 (4th Cir.), *cert. denied*, 463 U.S. 1214 (1983); *United States v. Booker*, 655 F.2d 562 (4th Cir. 1981).

to argue that respondents held Fulmer and Molitoris in involuntary servitude by psychological pressures resulting in "brainwashing."

The government's effort to greatly enlarge the meaning and reach of the Thirteenth Amendment and § 1584 is misguided. If there is good reason to believe that some insidious new form of involuntary servitude, a la *The Manchurian Candidate*, is abroad in the land then evidence to this effect may be brought before Congress. Congress may then consider whether "brainwashing" is more than pseudo-scientific psychobabble and, if so, whether and how it should be addressed, consistent with First Amendment guarantees.[2] A criminal prosecution, however, is not an appropriate vehicle for pioneering novel interpretations of the law, *see United States v. Garber*, 607 F.2d 92, 100 (5th Cir. 1979) (en banc), especially when they rest on scientifically—and constitutionally—untenable theories.

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[2] See Shapiro, *Involuntary Servitude: The Need For A More Flexible Approach*, 19 Rutgers L.Rev. 65, 84 (1964):

> "The term *involuntary servitude* without more, appears to be apposite only to the more classical situations of the past. The real task, therefore, is one more ideally suited to the legislature. . . . To be sure, a delicate balance must be achieved between that conduct which is deemed criminal and that which in our economic system is better labeled reprehensible only.
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> Further study may well demonstrate that the balance is indeed too delicate or perhaps even impossible to achieve. Should this be the case it is possible that the solution lies wholly without the Thirteenth Amendment and that a more flexible vehicle, such as the Fourteenth Amendment or the commerce clause ought to be employed."

A. The Terms, History And Purpose Of The Thirteenth Amendment And Section 1584 Make It Clear That An Unlawful Holding To Involuntary Servitude Requires Some Measure Of Actual Or Threatened Physical Force Or Legal Coercion.

The Thirteenth Amendment provides that "neither slavery nor involuntary servitude, except as a punishment for crime . . . shall exist within the United States. . . ." Section 1584 implements this Amendment by making it unlawful to sell a person into involuntary servitude or to knowingly and wilfully hold a person to involuntary servitude.

The government advocates a simplistic and absolutist construction of these terms. Absolute views of any kind are extraordinarily difficult to maintain. Indeed, as we discuss, the government itself is ultimately forced to retreat from the position that the law forbids the condition of involuntary servitude without regard to means by offering the self-imposed condition that the holding result from a source of coercion created—not just knowingly and wilfully exploited—by an employer. *See* Brief for Petitioner at 36.

It has long been a familiar rule that "a thing may be within the letter of the statute and yet not within the statute, because not within its spirit nor within the intention of its makers." *Holy Trinity Church v. United States*, 143 U.S. 457, 459 (1892). Every law must be construed with an eye toward the evils it was supposed to address. But in some areas more than others "a page of history is worth a volume of logic." *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921). This is certainly true of the Civil War Amendments. Indeed, this Court said as much

when the question was first raised. In the *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872), the Court explained that "involuntary servitude" was a prohibition of a slave-like condition; slavery, of course, being understood as a condition enforced by both the physical control of the master and the force of law.

> The exception of servitude as a punishment for crime gives an idea of the class of servitude that is meant. The word servitude is of larger meaning than slavery, as the latter is popularly understood in this century, and the obvious purpose was to forbid all shades and conditions of African slavery. It was very well understood that in the form of apprenticeship for long terms, as it had been practiced in the West India Islands, on the abolition of slavery by the English government, or by reducing the slaves to the condition of serfs attached to the plantation, the purpose of the article might have been evaded, if only the word slavery had been used.

Id. at 69.

The stalwarts who fought the Civil War did not declare anyone to be free of economic necessity, nor free of the fear that termination of employment might lead to being blackballed, nor free of the apprehension that abandoning the service of God might lead to damnation.

As this Court said, though adopted with reference to slavery of blacks, the Amendment would equally reach Mexican peonage or the Chinese coolie system. "But what we do say, and what we wish to be understood is, that in any fair and just construction of these Amendments, it is necessary to look to the purpose which we have said was the pervading spirit of them all, the evil which they were designed to remedy, and the process of continued addition to the construction, until that purpose was supposed to

be accomplished, as far as constitutional law can accomplish it." *Id.* at 72.

It is because history is so much a part of the Amendment that so many exceptions to its literal application have been made. *See* cases cited in Brief for Petitioner at 16, n. 6. Though the term might be given far broader reach if wrested from its context, it cannot be doubted that "involuntary servitude was intended to cover those forms of compulsory labor akin to African slavery. . . ." *Butler v. Perry*, 240 U.S. 328, 332 (1916).

It is an historical and logical mistake to view the Thirteenth Amendment as an early version of the National Labor Relations Act. The Thirteenth Amendment did inaugurate a system of free labor, *Pollock v. Williams*, 322 U.S. 4, 17 (1944), but it did so only by freeing labor from the threat of physical force or legal coercion. *See Clyatt v. United States*, 197 U.S. 207, 215-216 (1905). This is shown by the implementing statutes. The Anti-Peonage Act of 1867, ch. 187, 14 Stat. 546, struck at a condition of servitude akin to slavery resulting from legal coercion.

The Padrone statute, Act of June 23, 1874, ch. 464, 18 Stat. 251, struck at a system involving elements of both physical force and legal coercion. It forbade inveigling or kidnapping from another country with intent to hold in involuntary servitude, selling such a person into involuntary servitude or holding such a person in involuntary servitude.

A 1909 Act, ch. 321, 35 Stat. 1139, again aimed at a system of labor resulting from force or legal coercion or both. Specifically, the statute forbade importing a per-

son as a slave or to be held to service or labor. The legislative history cited by the government identifies contracts (i.e., the basis for legal coercion) entered into by persons other than the imported laborers themselves as the principal concern of the Amendment. Brief for Petitioner at 26-27. "Although Congress addressed modern forms of involuntary servitude, it is clear from the deliberations that Congress also intended to remain within the Thirteenth Amendment limitation requiring that the condition of servitude have some commonalities with slavery." Note, *Involuntary Servitude: Modern Conditions Addressed In* United States v. Mussry, 34 Cath. U. L.Rev. 153, 160, n.46 (1984).

Section 1584 is simply the most recent enactment in a line of statutes implementing the Thirteenth Amendment by prohibiting holding to involuntary servitude by physical force or legal coercion. Whether or not this consolidation of earlier statutes resulted in some broadening of prior law, as the government asserts, the fact that there is no hint of any such intent in the legislative record (*see* Brief for Petitioner at 28, n. 15), lends strong support to the conclusion in *Shackney* that relevant considerations "at least forbid[ ] any view that Congress considered section 1584 to be staking out important new ground." 333 F.2d at 482; *See also* reviser's notes to Section 1584 discussed by the chief reviser in Barron, *The Judicial Code, 1948 Revision,* 8 F.R.D. 439, 445 (1948) ("no changes of law or policy will be presumed from changes of language in[the] revision unless an intent to make such changes is clearly

expressed"); Shapiro, *supra,* 19 Rutgers L.Rev. at 80-81.[3]

The language used in section 1584 and its predecessor statutes, like the legislative history, reveals a focus on physical force or legal coercion. "Holding" in involuntary servitude is used, in section 1584, in conjunction with "selling" into involuntary servitude. One cannot sell someone to servitude without legal coercion or physical constraint to enforce the sale. The same is true of holding one who might be sold or otherwise forced into a condition of involuntary servitude.

It surpasses the bounds of credulity to suppose that Congress ever intended to forbid "holding" someone in involuntary servitude by bonds of affection, loyalty, dedication to principle or devotion to higher ideals. Yet while the government does not now manfully embrace such possibilities, it does not and ultimately cannot disavow the position expressly taken in *Shackney.* There the government admitted that under its entirely subjective conception of involuntary servitude any threatened adverse consequence from termination of service could be sufficient to support a claim of involuntary servitude, including interference with a child's admission to Yale. 333 F.2d at 480.

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[3] It is also difficult to reconcile the government's assertion that section 1584 reflects adoption of the recommendation that the statute "should make full exercise of congressional power under the Thirteenth Amendment by defining slavery and involuntary servitude broadly." Brief for Petitioner at 28, when (1) the government acknowledges Congress rejected broader legislation, *id.* at 30, n. 17, and (2) section 1584 did not give involuntary servitude any new or broader meaning than it had under prior law.

Stuck with a facially indefensible position, the government now attempts to minimize the ramifications of its open-ended construction, stating that a threat of the latter sort would not "ordinarily" be deemed to leave an employee with no choice. Brief for Petitioner at 34, n. 19.

Even more telling, perhaps, is the preface to this statement, namely that "certain injuries fall so far short of what is generally viewed as a grave loss that it is virtually inconceivable that they would be the equivalent in any victim's mind to death or serious bodily injury." *Ibid.* The paradigm on which the government draws—threats of death or serious bodily injury, in other words physical force—reflects the core concept that the government would have the Court renounce.

Contrary to the government's suggestion that the Sixth Circuit's emphasis on physical or legal coercion is aberrational, with one arguable exception no Court of Appeals applying section 1584 has done so in the absence of physical or legal coercion.[4] *See United States v. Bibbs,*

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[4] In *United States* v. *Mussry,* 726 F.2d 1448, 1453 (9th Cir.) *cert. denied,* 469 U.S. 855 (1984), the Court stated that "conduct other than the use, of threatened use, of law or physical force may, under some circumstances, have the same effect as the more traditional forms of coercion—or may be even more coercive; such conduct, therefore, may violate the 13th Amendment and its enforcing statutes." However, it was alleged in that case that defendants had imported people from Indonesia for purposes of service, that these people were stripped of their passports (a lack of identification being grounds for arrest in Indonesia) and their airplane tickets until they had paid for the costs of their transportation. It was also alleged they lacked knowledge of English or friends in this country or any other means of escape. While the psychological element of the alleged circumstances cannot be ignored, the facts look very much like physical/legal confinement of a classical sort.

564 F.2d 1165, 1168 (5th Cir. 1977) *cert. denied,* 435 U.S. 1007 (1978) (holding that a section 1584 violation occurs if the defendant has placed another "in such fear of physical harm that the victim is afraid to leave, regardless of the victim's opportunities to escape"); *United States v. Booker, supra* (confinement enforced by beatings, threats of death and serious injury); *United States v. Harris, supra* (same); *United States v. Warren, supra* (same); *Note, supra,* 34 Cath. U. L.Rev. at 166-170. To be sure, the use or threatened use of force is, as the government says, often accompanied by other oppressive conduct. But the use or threat of physical or legal force has always been the principal feature of a claim of involuntary servitude.

This conclusion is reinforced by consideration of false imprisonment, the common law analog of involuntary servitude. *Cf. Turner,* 473 F.Supp. at 374. For there to be false imprisonment, a person must be confined or restrained by force, threats of force or asserted legal authority. 1 F. Harper, F. James, O. Gray, *The Law of Torts,* § 3.8 at 292-96 (2d ed. 1986); *Prosser and Keaton on The Law of Torts,* § 11 at 49-52 (5th ed. 1984). "Moral pressure, as where one remains to clear away suspicion of theft, or to avoid a scene on the street, is not enough; nor, as in the case of assault, are threats for the future, as for example, to call the police and have the plaintiff arrested." *Id.* at 50 (fns. omitted). If conduct is not sufficient to constitute false imprisonment at common law, it would be anomalous at best to treat it as sufficient for a criminal conviction for holding to involuntary servitude.

While the government's absolutist construction of section 1584 has a seductive simplicity, it is a position that

even the government is ultimately unable to sustain. Thus the government states: "A person does not hold another to involuntary servitude when the coercion stems from societal conditions rather than the defendant's own conduct." Brief for Petitioner at 36. The statute does not by its terms, however, require that the one holding a person to involuntary servitude be legally responsible for the source of coercion. Indeed, it is the government's thesis that the statute does not address the means of holding at all. This being so, a person who knowingly and wilfully holds another in service which is involuntary by exploiting societal conditions nevertheless holds the other to involuntary servitude. The government's effort to eliminate this possibility from the reach of its construction is understandable but inconsistent with its statutory analysis. The need for a limiting principle for the statute is clear. The use or threat of physical or legal force is the limiting principle employed by Congress and acknowledged by the overwhelming weight of authority. There is no principled reason for accepting the substitute advanced by the government.

The government's unbounded and subjective construction of the Thirteenth Amendment and section 1584 is not faithful to history or the terms and purposes of the laws. While one may quarrel with some of the refinements of the Sixth Circuit's construction, the government's effort to jettison the essential limiting principle of actual or threatened physical or legal force is far more objectionable.

B. The Government's Construction Of The Law Opens The Door To The Use Of Inherently Unscientific And Unreliable Testimony Of The Sort It Has Chosen Not To Defend.

In place of physical or legal force as the means of holding to involuntary servitude, the government employed a theory of "involuntary coercion" or "brainwashing" propounded by Dr. Harley Stock. App. to Petition for Cert at 15a-17a, 21a-49a. In its petition for certiorari, the government did not challenge the Court of Appeals' conclusion that Dr. Stock's testimony was inadmissible (and prejudicial) because not shown to be consistent with a generally accepted explanatory theory. Yet one must question how the government may pursue a prosecution for holding to involuntary servitude without physical or legal force without using inherently unreliable and unscientific evidence of the sort given by Dr. Stock.

In its brief on the merits, the government seems to draw directly from Dr. Stock's brainwashing mythology in describing what it conceives to be its burden of proof. "[T]he government must show either that the master physically restrained the victim or left the victim no choice but to remain." Brief for Petitioner at 33. "No choice" is somewhat confusingly described as meaning (1) "no tolerable alternative;" (2) the victim's power to choose must have been "destroyed by the master;" or (3) absent threatened physical injury, "a consequence that the victim regards as equally serious or even more serious" than death or physical injury. *Ibid.*

To a person who prefers death to dishonor any threatened personal embarrassment upon termination of his services could, according to the government, make him a

slave. But the instant prosecution was centered not on (1) or (3), but on (2), the master's destruction of the victim's will. Thus, while the government does not dispute the Court of Appeals' condemnation of the inherently unscientific and unreliable brainwashing testimony of Dr. Stock, it nevertheless directly builds such testimony into its construction of the statute. Indeed, (1) and (3) are, upon scrutiny, largely variants of the zombie mythology inasmuch as they employ an entirely subjective standard, i.e., a premise that for the particular victim a given adverse consequence was psychologically intolerable, hence he was a victim of psychological coercion.

The central difficulty with the government's proposed proof of involuntary servitude is the same as the defect in its statutory construction. As discussed at length in Judge Krupansky's concurring opinion (App. to Petition for Cert at 21A-49A), the concept of "brainwashing" is derived from the experience of POWs during the Korean War. Brainwashing is imagined to involve some mysterious process by which one person may achieve total control over the mind of another. The actual studies of Korean prisoners of war do not support the claim that sophisticated psychological techniques exist to cause a person to involuntarily adopt a new set of beliefs even when a person is imprisoned, starved and tortured.[5] But even accept-

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[5] *See, e.g.*, A. Scheflin & E. Opton, *The Mind Manipulators* 89 (1978), noting that of over 3,500 American Korean War POWs, only about 25 refused repatriation, and about twice that number made pro-communist statements: "These numbers do not add up to a persuasive case that the communists developed a method to control the mind. . . . In the Civil War . . . about two percent of the Union soldiers captured by the South enlisted in the Confederation."

"The professional journals make it clear that coerced ideological conversion did not occur during the Korean War." *Id.* at 105.

ing for purposes of argument the brainwashing paradigm, that paradigm requires that the victim be physically restrained. Otherwise it is impossible to say that any kind of conversion is "involuntary." A person of general liberal orientation might find the "law and economics" school of thought totally repugnant. Yet, if he attends the University of Chicago Law School and ultimately finds himself a reluctant adherent of this philosophy, there is no way to describe this conversion as "involuntary" in any meaningful sense or in any way consistent with First Amendment rights, although his friends might well regard him as brainwashed. The brainwashing paradigm requires total physical control over the subject's environment. If a person is physically free to distance himself from expression of a philosophy he prefers not to hear he is not "involuntarily converted" or "brainwashed" or "psychologically coerced" if he remains and then adopts those views. Similarly, if a person is free of physical or legal coercion, his decision to remain in a role of service, reluctant or not, is not involuntary servitude.

In each case, then, the requirement of physical or legal control is an essential limiting principle. Without this limitation, "experts" like Dr. Stock may describe any conversion as involuntary. A person who adopts a new and seemingly strange religion (or other belief system) must have been brainwashed. A person who tithes because he is threatened with hell-fire and brimstone if he does not would thus be held in involuntary servitude to either the preacher or the church. Professor Harvey Cox describes this as "the myth of the 'evil eye' whereby it is thought that no sane person could possibly belong to a movement 'like this' and therefore the participant must be there involuntarily.

. . . " *Deep Structures in the Study of New Religions*, in Understanding New Religions 127 (J. Needleman & G. Baker, eds. 1978); *see* Balch, *What's Wrong With the Study of New Religions and What We Can Do About It* in Scientific Research and New Religions 25 (B. Kilbourne, ed. 1985) (as a descriptive label, "brainwashing . . . is essentially useless because it depends on untenable assumptions about the slippery issues of freedom and control").

The fictional image of an evil master who has subjugated the will of another through some secret power has existed at least since George du Maurier introduced Svengali in *Trilby* in 1894. There is no evidence Congress has ever credited such superstition. Indeed, the very fact that Congress has resisted anti-cultists' pressure to legislate against alleged brainwashing by so-called cults[6] suggests (1) the consensus that existing laws do not embrace (much less prohibit) brainwashing, and, (2) Congress has not accepted the concept or legislated against brainwashing.

The government's effort to abandon any requirement of physical or legal force in the means of holding to involuntary servitude raises grave constitutional concerns. As discussed below, it poses a direct threat to the First Amendment interests of both old and new religions and others. We believe these objections are insuperable. Certainly Judge Friendly's reminder that statutes should be construed to avoid grave constitutional questions is especially well taken in this context. 333 F.2d at 487.

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[6] See, for example, remarks made in February 5, 1979, Information Meeting of the Cult Phenomenon in the United States convened by Senator Dole.

II.

THE GOVERNMENT'S PROPOSED DEFINITION OF "INVOLUNTARY SERVITUDE" IS DANGEROUSLY OVERBROAD

The government has advanced a definition of "involuntary servitude" which proposes to include the phenomenon of psychological coercion as a sufficient basis for criminal liability. The government seeks to accomplish this objective by offering an absolutist construction of the term "involuntary servitude," as found in section 1584 and the Thirteenth Amendment, which completely disregards the *means* by which a condition of involuntary servitude is created, and instead focuses exclusively on the *state* of involuntary servitude. The government thus argues that "[i]nvoluntary servitude exists whenever the victim's service is compelled against his will. The term involuntary servitude refers to the victim's condition, not to the circumstances that led to it." Brief for Petitioner at 14.[7]

Recognizing the potential dangers of such an open-ended definition, the government spends considerable time offering various assurances that its proposed definition

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[7] The government's position tracks Judge Dimock's concurring opinion in *United States v. Shackney*, 333 F.2d 475, 487 (2d Cir. 1964) ("[The] word ['involuntary'] raises the question of whether the will of the servitor has been subjugated, i.e., whether he has been rendered incapable of making a rational choice, and not the question of what were the means by which the servitude was imposed"), and Judge Reinhardt's opinion in *Mussry*, 726 F.2d at 1453 (" '[T]he means or method of coercion' is not the determining factor in deciding whether there is a holding.").

is not subject to arbitrary or discriminatory application.[8] Central to the government's warranty is a three-part test requiring that: "(1) the victim must have worked for the defendant against his will; (2) the defendant must have specifically intended that result; and (3) the defendant's conduct must have been the cause of that outcome." *Id.* at 13.[9]

Despite the government's assurances that the reach of section 1584 will be appropriately confined to legitimate "incidents of slavery," Amicus remains concerned that without a limiting construction the statute will also implicate constitutionally protected conduct, a concern voiced by the majority opinion in *Shackney*, as well as by the *en banc* majority below. Even in his concurring opinion to *Shackney*, 333 F.2d at 488, Judge Dimock acknowledged the difficulties of applying a statute which calls for "an appraisal of the state of the human mind."[10]

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[8] *See* Brief for Petitioner at 32-40.

[9] The government's test is apparently drawn from *Mussry*, where the court stated that "[a] holding in involuntary servitude occurs when an individual coerces another into his service by improper or wrongful conduct that is intended to cause, and does cause, the other person to believe that he or she has no alternative but to perform the labor." 726 F.2d at 1453. The government's test appears broader, however, than the *Mussry* test, which requires that the coercion be accomplished through "improper or wrongful conduct." As explained throughout, Amicus object to any test which fails to define the specific conduct which purportedly violates the law.

[10] *See also* Shapiro, *supra*, 19 Rutgers L. Rev. at 69: "From the start, one is met with the different meanings accorded the term *involuntary servitude*. Of hoary socio-legal ancestry, moulded by eighteenth and nineteenth century conditions, the terms appears in early acts of Congress, in state constitutions, and in the federal constitution. Application of the term to situations perhaps not akin to those of earlier history makes understanding difficult. . . ."

Amicus submits that the government's proposed definition of and test for involuntary servitude does nothing to allay these fears. The government's definition continues to ignore the specific means by which involuntary servitude is accomplished. As a result, in addition to reaching recognized forms of involuntary servitude such as forced migrant or domestic labor,[11] the definition also "appear[s] to place the day-to-day activities of cult groups, communes and religious orders," App. to Petition for Cert. at 14a, within its ambit.

Amicus actively seeks to spread its religious views in a variety of ways, including "oral and written dissemination of the Krishnas' religious views and doctrines." *Heffron v. International Society For Krishna Consciousness*, 452 U.S. 640, 647 (1981). The goal of these activities, of course, is to proselytize and win adherents to their religion, an activity which is central to the vitality of all religions, and which implicates fundamental First Amendment rights such as speech, belief, and, in appropriate circumstances, religiously motivated conduct such as full-time labor (i.e. witnessing, proselytizing, soliciting, canvassing, etc.) on behalf of a religious organization.

Amicus, of course, is not alone in this regard. Christian missionary activities throughout the centuries have been predicated upon the "Great Commission:" "[G]o therefore and make disciples of all nations, baptizing them in the name of the Father and of the Son and of the Holy Spirit, teaching them to observe all that I have commanded you. . . ." *Matthew* 28:19.

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[11] "[Y]esterday's slave may be today's migrant worker or domestic servant." *Mussry*, 726 F.2d at 1451.

In the *Bhagavad-gita,* Lord Krishna explains: "For one who explains the supreme secret to the devotees, devotional service is guaranteed, and at the end he will come back to Me. There is no servant in this world more dear to Me than he, nor will there ever be one more dear." A. Bhaktivedanta, *Bhagavad-gita As It Is* 18:68-69 (1972).

Jewish proselytizing was intense in the Hellenestic period during the Diaspora. The Torah was translated into Greek, synagogues were opened for religious instruction, and provision was made for those who accepted Jewish teaching. *See* S. Baron, *A Social and Religious History of the Jews* 162-70 (1952).

Proselytization and conversion are also woven into the fabric of American history. Thus, the Seventh Day Adventists demonstrated "tremendous missionary activities." A. Hockma, *The Four Major Cults* 100 (1963). The Jehovah's Witnesses developed "efficient and far-flung publishing enterprises, missionary training schools, and evangelism programs." S. Ahlstrom, *The Religious History of the American People* 807 (1972). The Quakers at their inception were evangelical and extremely dynamic: "All tried to make converts and tried all the time." D. Trueblood, *The People Called Quakers* 5 (1966). A tenet of the American Mennonites has been an "active evangelism characterized by a keen personal interest in the personal conversion and salvation of one's associates." J. Wenger, *Glimpses of Mennonite History and Doctrine* 120 (2d ed. 1947). Indeed, all missionary movements, including Methodism,[12] Roman Catholicism,[13] and Protestant Christianity[14] demonstrate the centrality of such activities to their fundamental mission and identity.

The government's proposed definition of involuntary servitude, which focuses exclusively on "whether the will of the servitor has been subjugated" *Shackney,* 333 F.2d at 475 (Dimock, J., concurring), jeopardizes this hallowed tradition by using novel theories of "brainwashing," "mind control," and "psychological coercion" in order to establish the basic element of "involuntariness."

All religions, whatever their persuasion or point of origin, seek subjugation of the will of the religious adherent to a higher order—whether it be to a Supreme Being, to a Pope, guru or holy man, or to a metaphysical construct of beliefs and rules. Organized religion is concerned with the entire life of its members, and not simply that portion spent in the chapel or synagogue. The prom-

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12 William R. Cannon, a Bishop in the United Methodist Church, states: "Evangelism, therefore, is not optional. It is mandatory. It is not one among several characteristics of Christianity. It is expressive of the essence of Christian faith. When the church becomes merely a 'holding operation,' it ceases to exist; for its nature is not to preserve itself, but, like its crucified Lord, to give itself away in behalf of others. It serves the world by winning its inhabitants to Jesus Christ." W. Cannon, *Evangelism in a Contemporary Context* 1 (1974).

13 Pope Paul VI in "Evangelico Nuntiandi" states: "We wish to confirm once more that the task of evangelizing all people constitutes the essential mission of the church. . . . Evangelizing is in fact the grace and vocation proper to the Church, her deepest identity. She exists in order to evangelize. . . ."

14 "It is this process of conversion that the whole task of Protestant Christianity has been felt to focus. The work of the Church has been conceived to be that of making converts." E. Ames, *The Psychology of Religious Experience* 5 (1910).

ise of salvation for obedience to a higher power, and the threat of damnation for disobedience define and inform the shape of divine life. According to one critical philosopher, "when religion becomes organized, man ceases to be free. It is not God that is worshipped but the group or the authority that claims to speak in His name. Sin becomes disobedience to authority and not violation of integrity." Quoted in R. Lifton, *Thought Reform and the Psychology of Totalism* 456 (1961).[15]

Faith is non-volitional. A man of science may, contrary to his every wish, be seized by religious fervor and thus become the involuntary servant of a religious group. Turn-of-the-century psychologist/philosopher William James defined conversion as "the process, gradual or sudden, by which a self hitherto divided, and consciously wrong, inferior and unhappy, becomes unified and consciously right, superior and happy, in consequence of its firmer hold upon religious realities." W. James, *The Varieties of Religious Experience* 186 (Modern Library ed. 1936). For James, therefore, conversion means "that religious ideas, previously peripheral in his consciousness, now take a central place, and that religious aims form the

[15] While Amicus' focus is on religion, any charismatic movement might equally be condemned by the government's construction of section 1584 as holding to involuntary servitude. According to some scholars, charisma affords "an opportunity to return to the childhood state of security by entrusting the decision-making and responsibility for one's own life to another" and involves the exploitation of certain vulnerabilities. See A. Sheflin & E. Opton, *The Mind Manipulators* 41-43 (1978).

habitual centre of his energy." *Id.* at 193. James concludes, moreover, that the most fundamental effect of conversion is the convertee's belief that he or she is now under the "higher control" of God. *Id.* at 238-243.[16]

The consequences of conversion are far-reaching. For example, the *Exercises* of the Jesuits give precise instructions on what to feel, and prescribe specific techniques of breathing and posture. Judaism clearly defines and "controls" what the observant may eat, when they may work, and what they may wear. On the Sabbath, an Orthodox Jew may not handle money, drive a car, strike a match, carry a piece of string, or speak on the telephone.

Those Christian faiths which call the faithful to witness clearly direct behavior in the sense that the observant must take to the streets and spread the Word. The great majority of Mormon men go on mission for 18 months at age 19 at their own expense. During that time, they exile themselves from family and friends, and may not communicate with them by phone, instead having to rely on letters which may be written only once a week. Their primary task is knocking on doors, and they are allowed no movies, swimming, motorcycles, television or video games. Japenga, *A Teenager's Life as Door-To-Door Missionary*, San Francisco Chron., Nov. 27, 1983, at 5.

[16] This principle of control by or subjugation to God is also emphasized in the *Bhagavad-gita*, where Krishna instructs Arjuna, His devotee, as follows: "The Supreme Lord is situated in everyone's heart, O Arjuna, and is directing the wanderings of all living entities who are seated as on a machine, made of the material energy. O scion of Bharata, surrender unto Him utterly. By His grace, you will attain transcendental peace and the supreme and eternal abode." A. Bhaktivedanta, *Bhagavadagita As It Is* 18:61-62 (1974).

Krishna consciousness requires its members to "[f]orsak[e] the pleasures of the material world, don[ ] strange cloth[es,] . . . alter[ ] one's diet, [rise] daily at 4 a.m. to chant religious prayers, and perhaps experienc[e] the scorne and derision of nonbelieving friends and family." *Barber*, 450 F.2d at 440.

The history of religion is thus replete with subjugation of the will and exaction of service. Jehovah's Witnesses believe that if they obey the dictates of faith, they will be saved. E. Schipper, *Cults In North America* 39 (1982). But if they abandon the faith, they face total ostracism. *See Paul v. Watchtower Bible & Tract Society of New York*, 819 F.2d 875 (9th Cir. 1987). And what more graphic example of obedience and subjugation of will to a superior authority can there be than the lifestyle of Catholic nuns and priests?

The government's proposed definition of involuntary servitude makes no provision for such religious practices. To the contrary, at trial the government endorsed a theory of prosecution based upon psychological coercion that would directly implicate such practices. When the government's trial theory is compared to the religious practices described above, the extent of Amicus' concern begins to emerge. Indeed, in recent years a number of lawsuits have been brought by apostates challenging the proselytization and conversion practices of certain religious groups based upon substantially identical theories of "brainwashing" and "mind control." *See, e.g. Turner v. Unification Church, supra; Schuppin v. Unification Church*, 435 F. Supp. 603 (D. Vt. 1977); *Molko v. Holy Spirit Assn., supra; Katz v. Superior Court, supra.* These challenges, moreover, have not been limited to civil cases, but have

encompassed criminal prosecutions as well. *See People v. Murphy, supra,* (unsuccessful criminal prosecution for unlawful imprisonment by brainwashing).

Amicus' fears are thus neither speculative nor unfounded.[17] Under its proposed definition of involuntary servitude, the government need only show that the alleged victim, or religious convertee, was "rendered incapable of making a rational choice," *Shackney*, 333 F.2d at 487 (Dimock, J., concurring) regardless of the means or methods used to produce such a state of mind.

Thus, in order to successfully prosecute a religious organization for subjugating the will of its members, the government would only have to show that: (1) the religious convertee worked for the religion against his or her will, i.e., that their free will or "voluntariness" was overborne by "mind control" practices of the religion; (2) the religion specifically intended to subjugate the will of the convertee to its dictates; and (3) the religion's practices and teachings actually caused such a subjugation of will.

The government's open-ended definition of involuntary servitude, which seeks to establish a "holding" by psychological coercion alone, thus directly implicates over-

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[17] The realistic potential of federal prosecution of religious practices under an expanded version of section 1584 is demonstrated by *Turner v. Unification Church*, 473 F.Supp. 367 (D.R.I. 1978) *aff'd*, 602 F.2d 458 (1st Cir. 1979) (per curiam) where the plaintiff, a former member of the Unification Church, unsuccessfully sought to establish a civil cause of action for "involuntary servitude" under the Thirteenth Amendment and 18 U.S.C. § 1583. At least one commentator, moreover, has actively advocated the establishment of such a cause of action. *See* Delgado, *Religious Totalism as Slavery*, 9 N.Y.U. Rev. L. & Soc. Change, 51 (1979-80).

breadth concerns. Indeed, even if the government's proposed construction were a "clear and concise enactment," which it is not,[18] it would still be " 'overbroad' if in its reach it prohibits constitutionally protected conduct." *Grayned v. City of Rockford*, 408 U.S. 104, 114 (1972). As explained above, the government's proposed definition clearly implicates constitutionally protected activity, and is thus overbroad in two respects.

First, because the government suggests an absolutist definition of involuntary servitude which eschews any consideration of the means by which an involuntary holding is accomplished as a limitation on its potential reach, it lacks the required specificity necessary to avoiding sweep-

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[18] Although the focus of Amicus' argument is overbreadth, the government's proposed definition of involuntary servitude is also void-for-vagueness. Indeed, despite the assurances by Judge Dimock in *Shackney* and Judge Reinhardt in *Mussry* that the "mens rea" requirement obviates vagueness problems, "men of ordinary intelligence" are nonetheless devoid of any meaningful guidance as to the type of conduct that is prohibited.

> That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.

Connally v. General Construction Co., 269 U.S. 385, 391 (1926).

The failure to define the prohibited conduct may result in a prosecution for a forbidden subjugation of the will based upon a state of mind lacking any necessary relation to conduct.

ing within its scope constitutionally protected conduct such as conversion and proselytization. "Where a statute's limited scope, unaided by a narrowing . . . court interpretation, is capable of reaching expression sheltered by the First Amendment, the [overbreadth] doctrine demands a greater degree of specificity than in other contexts." *Smith v. Goguen*, 415 U.S. 566, 573 (1974).

Second, because theories of "brainwashing" and "mind control" are the linchpin of a successful government prosecution for involuntary servitude by psychological coercion, the sweep of the government's proposed definition is not only real, but "substantial." *Bd. of Airport Comm'rs of the City of Los Angeles v. Jews For Jesus, Inc.*, — U.S. —, —, 107 S.Ct. 2568, 2569 (1987); *New York v. Ferber*, 458 U.S. 747, 769 (1982). Indeed, "[m]ind control is a 'bull-in-the-china-shop' concept." Robbins, *Religious Movements, The State, and the Law: Reconceptualizing "The Cult Problem,"* 9 N.Y.U. Rev. Law & Soc. Change, 33, 35 (1980-81). Imprecise and unbounded, it joins incongruous positions that "mask a latent concern for the deviant content of belief and bizarre rituals." *Id.*

Once endorsed, moreover, there is no limit to its employment. In addition to proselytization and conversion, such a concept is capable of being applied to literally every form of high demand persuasion, whether it be religious, political, social, economic, or even medical.[19] Thus, ab-

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[19] In an age of subliminal advertising, television exposure, and psychological salesmanships, everyone is exposed to artful and designing persons at every turn. It is impossible to measure the degree of likelihood that some will suc-

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sent a limiting construction of involuntary servitude such as that established by Judge Friendly in *Shackney*, requiring physical force or legal coercion, the deterrent effect of the government's proposed definition on constitutionally protected conduct is substantial.

For all these reasons, the government's proposed definition of involuntary servitude is unnecessary, undesirable and dangerously overbroad.

CONCLUSION

The government's construction of the Thirteenth Amendment and section 1584 is dangerous and unwarranted. The history, terms and purpose of these acts are honored, and First Amendment values are protected, only by a carefully restrained construction consistent with the holding of *Shackney*.

Respectfully submitted,

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cumb. In the field of beliefs, and especially religious tenets, it is difficult, if not impossible, to establish a universal truth against which deceit and imposition can be measured.

Katz v. Superior Court, 73 Cal.App.3d 952, 970, 141 Cal. Rptr. 234 (1977).